

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 208 OF 2024

Sagar Shankar Jadhav]
Age 39 years, Occ. Labour,]
R/o. Dangatvasti, Agashivnagar,]
Malkapur, Tal. Karad, Dist. Satara.] ... Appellant

Versus

1. The State of Maharashtra]
Through Police Sub Inspector,]
Karad City, Karad,]
Tal. Karad, Dist. Satara.]
2. Anita Mukesh Pawar]
Age 54 years, Occ. Private Job,]
R/o. Dangatvasti, Agashivnagar,]
Malkapur, Tal. Karad, Dist. Satara.]
(Original Complainant).] ... Respondents

★ *Mr. Pranav M. Borgave a/w. Ms. Dnyaneshwari Utpat, Mr. Panjabrao Kanse, Mr. Sagar Waghmode, Mr. Ajit Kapale & Mr. Ajinkya Dubal for the Appellant.*

★ *Mr. A.A. Naik, A.P.P. for the Respondent-State.*

Coram : R.G. AVACHAT &
AJIT B. KADETHANKAR, JJ.

Date : 18th February 2026.

ORAL JUDGMENT (PER : R.G. AVACHAT, J.)

1. The challenge in this Appeal is to the Judgment and Order dated 22nd January 2024 of conviction for the offence punishable under Section 302 of the Indian Penal Code, 1860 (*for short, "I.P.C."*) and consequential sentence of imprisonment for life. It is the case of the prosecution that the Appellant committed murder of 7 year old brother-in-law on account of the Appellant's strained relationship with his in-laws.

2. The case is based on circumstantial evidence. The prosecution examined in all 11 witnesses and adduced certain documentary evidence in the nature of (i) Crime Scene Panchanama, (ii) Seizure Panchanama, (iii) Inquest Panchanama, (iv) Post-mortem (P.M.) report etc. The trial Court on appreciation of evidence in the case, convicted and consequently sentenced the Appellant as stated above.

3. **Appellant's Argument :**

3.1 Learned Advocate for the Appellant would submit that the case is based on circumstanatial evidence. According to him, each and every circumstance relied on by the prosecution should be proved upto the guilt.

The circumstance proved must lead to only and only inference that it is the Appellant and none else has committed the crime.

3.2 He relies on the Judgment of the Hon'ble Supreme Court in the case of *Sharad Birdhi Chand Sarda Vs. The State of Maharashtra, reported in 1984 AIR 1622 : 1984 SCC (4) 116*. According to him, the Investigating Officer has not adhered to the Standard Operating Procedure (S.O.P) for Crime Scene Investigation as regards seizure, ceiling and preservation of the articles. According to him, there is no evidence at all to indicate the Appellant to have ever been medically examined and his blood was obtained for grouping.

3.3 He would submit that due to the love marriage of the Appellant performed against the wish of the Appellant's in-laws, his mother-in-law (informant) had grudge to lodge a false report against the Appellant.

3.4 According to him, even if we read the evidence of the prosecution witnesses as it is, the same at the most may lead us to infer a strong suspicion against the Appellant. He further submit that that suspicion however strong, cannot take place a proof.

3.5 He would further submit that the C.A. reports relied upon by the prosecution indicate that the blood group of the Appellant was the same as that of the deceased. The clothes alleged to have been recovered at the

instance of the Appellant were not proved to have been on the person of the Appellant at the relevant time. According to him, none of the prosecution witnesses deposed that the Appellant was clad in those clothes. According to him, even if this piece of evidence is accepted as it stands, at the most it would establish that the clothes seized pursuant to the disclosure statement borne blood stains of group 'A'. The age of blood stains has not been brought on record. The disclosure statement was made two days after the Appellant was arrested.

3.6 Learned Advocate for the Appellant further submits that the so called witnesses namely, PW-7 to PW-10 who were examined on the point of last scene, have inconsistencies *inter se* their evidence. According to him three of these four witnesses testified that the deceased was seen proceeding towards the area whereat public toilet was located. According to these witnesses, the Appellant was seen following the deceased. Admittedly, the Appellant was having a small bucket with water, in his hand. As per the case of the prosecution itself, the Appellant was proceeding ostensibly to answer the nature's call. There is nothing to indicate that it was a false pretext. The conduct of the Appellant, even if taken as it is, would be wholly natural, as there was no lavatory attached to the Appellant's residence and all persons in the vicinity used the public toilet.

3.7 So far as regards PW-9 Suresh is concerned, he has acted as a 'Panch' to the Crime Scene, which was drawn within hours of registration of F.I.R.. This witness claimed to have seen the Appellant following the deceased. Had this witness really seen the Appellant as claimed, it would have been natural for him to immediately report the same to the police while he was in their company for panchanama. However, his statement came to be recorded two days thereafter. According to the learned Advocate, this witness, PW-9, appears to be a got-up / planted witness.

3.8 Learned Advocate reiterates that taken the evidence of the prosecution as it is, it would at the most be inferred that the Appellant might have committed the crime. There is a wide gap between 'may and must, have committed the offence'. The Appellant is entitled to keep silent. There was nothing incriminating compelling the Appellant to explain in his examination under Section 313 of Criminal Procedure Code (for short, "Cr.P.C.").

3.9 According to him, all in all, the prosecution evidence falls short of bringing home the charge beyond reasonable doubt. On the basis of such evidence, the trial Court ought not to have convicted the Appellant. He, therefore, urged that the Appeal be allowed.

4. **Respondents Argument :**

4.1 Learned A.P.P., on the other hand, would submit that although the case is based on circumstantial evidence, the wife of the Appellant had no reason to depose falsely against him at the cost of her matrimonial relationship. The same speaks volumes. The evidence of the informant substantially went unchallenged. The evidence on record indicate that all was not well between the Appellant on one hand and the informant and in-laws on the other.

4.2 Learned A.P.P. draws our attention to the F.I.R. (Exh. P/67) lodged by the Appellant's mother-in-law way back in 2009, when the Appellant had assaulted her with a sharp weapon. According to the learned A.P.P., this fact has been admitted in the cross-examination. This goes a long way to indicate that the Appellant had a strong motive to eliminate the deceased.

4.3 The informant (PW-2) Anita Mukesh Pawar has stated in so many words that the deceased had fear of the Appellant. Some time prior to the incident, the Appellant had slapped the deceased and turned him away with a threat of dire consequences if he returned back.

4.4 According to the learned A.P.P., PW-7 and PW-9 have, in so many words, testified that they saw the Appellant following the deceased towards an isolated place. It was the Appellant who himself took these witnesses to the crime scene. According to him, how come the Appellant had knowledge

that the deceased was lying dead at an isolated place. He meant to say that it was the Appellant and none else to have committed the crime.

4.5 Learned A.P.P. would further submit that although the fact stated by PW-2 in her examination-in-chief does not find place in her F.I.R. (Exh. P/23), the defence has sought to bring the same on record to contend that it amounts to an omission constituting a contradiction. He invited our attention to the explanation appended to Section 162 of Cr.P.C. and to the judgment of the Hon'ble Supreme Court in the case of *V K. Mishra & Anr. Vs. State of Uttarakhand & Anr., reported in AIR 2015 SC 3043*.

4.6 According to him, during the cross-examination of PW-2 Anita, she was not confronted with the F.I.R.. He relied upon Section 145 of the Evidence Act to submit that the manner in which a contradiction is required to be proved has not been adhered to and therefore the contention of the defence that whatever has been stated by PW-2 in her examination-in-chief and which finds no place in the F.I.R. should be read as a material omission amounting to contradiction, can not be accepted.

4.7 He would further submit that the clothes were seized pursuant to the disclosure statement made by the Appellant. He adverted our attention to the evidence of PW-4, a panch witness to the disclosure statement and seizure of clothes.

4.8 According to him, the Investigating Officer was not confronted with the S.O.P. He meant to say that before the trial Court, no such defence as regards seizure sampling and preservation of the articles was ever raised. The learned defence Advocate therefore could not be heard first time in appeal to contend the S.O.P. to have not been followed.

4.9 According to him, the time gap between the Appellant being last seen together with, or closely following, the deceased and the time of death was so narrow, as it excludes the possibility of some one else to have committed the offence.

4.10 According to him, all the parameters required to be proved in a case based on circumstantial evidence have been duly established so as to point conclusively to the guilt of the Appellant. He reiterated the reasons given by the trial Court in support of the judgment impugned herein.

4.11 Learned A.P.P. has drawn our attention to the evidence of PW-1 and PW-4, the panch witnesses. Learned A.P.P. ultimately urged for dismissal of the appeal.

Discussion and consideration :

5. We have considered the submissions advanced. Perused the judgment impugned herein and also gone through the evidence adduced by the prosecution. As the case is based on circumstantial evidence, before

adverting to appreciate the evidence on record, we have to refer to the observations of the Hon'ble Supreme Court in the case of ***Sharad Birdhi Chand Sarda*** (supra).

5.1 It has been observed as follows :

- (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 Sahabrao Bobade & Anr. v. State of Maharashtra() 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.*

6. To bring home the charge, the prosecution has relied on the following circumstances.

- (i) Motive;
- (ii) Last Seen together and
- (iii) Recovery of blood stained clothes of the Appellant.

6.1 The deceased met with homicide death is not in dispute. PW-1 and PW-4 are the panch witnesses. Their evidence if accepted as it is, what is said to have been proved is the scene of occurrence and the recovery of blood-stained stones therefrom and seizure of blood stained clothes. The defence does not dispute this piece of evidence, and rightly so, since it merely establishes the situs of the crime and the seizure of certain articles from the spot and pursuant to the disclosure statement. This evidence do not advance the prosecution case in establishing the charge against the Appellant.

7. **Motive** : It is true that in a case based on circumstantial evidence, motive plays an important role and is, therefore, required to be proved. However, it may sometimes happen that motive, being an intangible, remains locked in the mind of the culprit. In the case at hand, the motive attributed to the Appellant is the strained relationship between him and his mother-in-law and her family members. The reason therefor is that it was love marriage of the Appellant, as his wife Sonali had eloped with him and married him

against wish of her family. To make out a case of motive, the evidence of PW-2, the informant and PW-6 Sonali (wife of the Appellant) was adverted to. Appreciation of the evidence of these witnesses would indicate that all was not well between the Appellant on the one hand and his mother-in-law and even wife on the other. F.I.R. (Exh. P/23) makes out a case that the Appellant way back in 2009 had assaulted his mother-in-law. The crime in-question took place about 10 years after. There is also evidence of wife of the Appellant which indicate that there used to be frequent matrimonial bickering. On one occasion she had even left the Appellant and started residing with her mother. She had even started residing at Karad for some time. It was only upon the intervention of the villagers a truce was worked out. Thereafter, PW-6, the wife of the Appellant, started residing at Aagashivnagar. It is like a hutment area. The house of the informant (PW-6) was in the nearby the house of the Appellant. It is true that the wife of the Appellant (PW-6) has no reason to falsely depose against the Appellant that too at the cost of her matrimonial institution. Her evidence and the evidence of Appellant's mother-in-law go a long way to make out a case that all was not well between the Appellant and his in-laws. Still, we have our reservations as to whether the Appellant would have harboured any grudge against his seven-year-old brother-in-law. It is true that PW-2 in her examination-in-chief has testified that when the deceased was not seen

around, PW-2 enquired with the Appellant about the whereabouts of the deceased. The Appellant thereupon told her to have slapped him and turned him away with a threat of dire consequences, if he returned. This piece of evidence does not find place in the F.I.R. (Exh. P/23). She admitted that she had no explanation as to why the said fact does not find mention in the F.I.R. In our view, therefore, it was not obligatory on the part of the defence Advocate to draw the attention of PW-2 to her F.I.R., which is in the nature of a previous statement, and then specifically point out the particular portion therein which is inconsistent with her deposition before the Court. There can be no dispute as to the way in which a contradiction is to be brought on record and proved. Since, in the present case, the omission had already been brought on record (vide paragraph No. 14 of the prosecution evidence), we are of the view that it was not necessary to draw the attention of PW-2 to the F.I.R. lodged by her. The reliance placed on the judgment of the Hon'ble Supreme Court (supra) is, therefore, of little assistance to the prosecution.

8. **Last Seen together** : Even we take the case of the prosecution as regards motive to have been proved, the matter does not rest at that. The prosecution is required to prove further circumstances, one of which is the last seen. To make out this theory of last seen, the prosecution relied upon the evidence of four witnesses, namely, Ramchandra L. Sonjari (PW-7), Mayur Laxman Khandagale (PW-8), Dipak Shamrao Thorat (PW-9) and

Suresh Tatya Sonjari (PW-10).

9. Learned A.G.P. was however candid to give up evidence of PW-8 and PW-9. We therefore do not propose to read their evidence in examination-in-chief. What PW-7 has testified is that he had seen the deceased proceeding towards an isolated place, where public toilet was located. It was little past 7.30 pm. It was drizzling (raining). Electricity supply was off. He then claimed to have seen the Appellant following the deceased. According to both PW-7 and PW-10, they had seen the Appellant closely following the deceased. According to them the deceased was having a bucket in his hand. From the evidence of these witnesses and the case of the prosecution as it stands, it appears that the Appellant was proceeding behind the deceased under the pretext of answering nature's call. Admittedly, no toilet was attached to the Appellant's house. Even persons residing in the vicinity would use the public toilet. There is no evidence to indicate that the Appellant left the bucket midway. In fact, the prosecution could not locate the bucket. It, therefore, cannot be said that the Appellant was proceeding towards the said spot under the pretext of answering nature's call. Even we accept the evidence of these two witnesses, it can only be inferred that the deceased was seen proceeding in the dark towards public toilet and immediately after a while the Appellant was seen following him. At the most, it may raise a strong suspicion. Since the Appellant was seen proceeding with a bucket full

of water, it may be nobody's guess that he was proceeding to answer the nature's call and nothing more.

10. It is true that some of the prosecution witnesses have testified that it was the Appellant who led them to the scene of occurrence. However, a close reading of their evidence would only indicate that the Appellant had joined them in the search for the missing child. It is not the prosecution case that the Appellant had stated that the deceased would be found at that particular place or that he had any prior knowledge thereof. The mere conduct of the Appellant in joining the search party and proceeding to the spot where the offence did take place cannot, therefore, be said to be a circumstance wholly inconsistent with his innocence.

11. As per the evidence of the informant (PW-2), the mother of the deceased, the deceased had returned after answering nature's call. In that context, it is difficult to understand why, in darkness, the deceased would again proceed towards an isolated place. Admittedly, the deceased was a seven-year-old boy. If he had been in fear of the Appellant, it would have been natural for him to rush back to his residence.

12. Be that as it may, the evidence of PW-7 and PW-10 even if we accept the same as it is, may lead to infer that while the deceased went towards public toilet, the Appellant was seen following him with a bucket of water,

necessarily an inference that he might have even been proceeding to answer the nature's call could also be possible.

13. **Recovery of blood stained clothes of the Appellant :** Now, what remains is the last circumstance of the recovery of blood stained clothes pursuant to the statement made by the Appellant. Reading the evidence as it is, what has been proved is that the Appellant made a disclosure statement pursuant to which a black trouser and black shirt was recovered from his residence. The C.A. report indicate that these articles had blood stains of blood group 'A'. None of the prosecution witnesses deposed that the Appellant was clad in these clothes at the relevant time.

14. Admittedly, the C.A. report indicates that the blood group of the Appellant and the deceased was the same, i.e., 'A'. Therefore unfortunately for the prosecution, this circumstance cannot be said to have been conclusively established.

15. Learned A.P.P sought to contend that if the clothes were stained with the blood of the Appellant himself, there ought to have been injuries on his person. At first blush, the submission appears attractive. However, the fact remains that the said clothes were recovered two days after the arrest of the Appellant. It is reiterated that there is no evidence to show that the Appellant was wearing those clothes at the relevant time. Furthermore, the age of the

blood stains found on the clothes has not been established. In these circumstances, this fact cannot be said to have been conclusively proved so as to infer that the blood stains were that of the deceased and of none else.

16. Upon re-appreciation of the evidence referred to hereinabove, we find that each and every circumstance has not been conclusively proved. The chain of circumstances is not so complete as to exclude the possibility of the involvement of any other person and does not unerringly point towards the guilt of the Appellant. On the basis of such quality of evidence, the trial Court ought not to have convicted the Appellant.

17. We are, therefore, unable to concur with the conclusion arrived at by the trial Court, and interference with the impugned order is therefore warranted. In the result, the Appeal succeeds.

18. Hence the following Order :

- (i) The Appeal is thus allowed.
- (ii) The judgment and order dated 22nd January 2024 in Sessions Case No. 9 of 2020 passed by the learned District and Addl. Sessions Judge, Karad, convicting the Appellant for the offences punishable under Section 302 of I.P.C. and consequently, sentencing him to suffer imprisonment for life is hereby set-aside.

- (iii) The Appellant stands acquitted of the offence punishable under section 302 of I.P.C..
- (iv) Fine amount, if paid, be refunded to the Appellant immediately.
- (v) The Appellant shall be set at liberty forthwith, if not required in any other case.

[AJIT B. KADETHANKAR, J.]

[R.G. AVACHAT, J.]

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