



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Criminal Appeal No. 101 of 2024

Kisan Jaju Dhikar
Aged - 40 years, Occ. : Labourer,
R/o Kamida, Tq. Chikhaldara,
Distt. Amravati.

... Appellant

- Versus -

The State of Maharashtra,
Through Police Station Officer,
Police Station, Chikhaldara,
District - Amravati.

... Respondent

Mr. P. R. Jalit, Advocate for the appellant
Mr. S. S. Doifode, APP for the State/respondent

**CORAM : ANIL L. PANSARE AND
NIVEDITA P. MEHTA, JJ.**

Date of reserving judgment : 07-01-2026
Date of pronouncing judgment : 14-01-2026

JUDGMENT (Per : ANIL L. PANSARE, J.)

The appellant is aggrieved by the judgment and order dated 28-6-2023 passed by learned Additional Sessions Judge-2, Achalpur in Sessions Case No. 205/2019 whereby the appellant has been convicted for the offence punishable under Section 302 of the Indian Penal Code (IPC) and sentenced to suffer life imprisonment and to pay fine of Rs. 5,000/-.

2. Briefly stated, the allegation is that on 9-7-2019 at about 3.30 a.m. at Village Kamida, Taluka Chikhaldara, District Amravati, the appellant committed murder of his wife. The murder took place in the house where appellant, his wife and children were residing.

3. The law was set in motion by brother (P.W. 3) of deceased who stated that on 9-7-2019, at about 4.30 a.m., Sarpanch of village came to his house and informed that appellant has killed his wife by means of axe at 3.30 a.m. on a petty quarrel. He inflicted injury on head, forehead and ear. P.W. 3 and his wife rushed to the house of appellant. They saw that P.W. 3's sister was lying on bed in pool of blood, having injury on head, forehead and ear. He enquired with appellant about the cause of death, to which, he did not say anything and attempted to flee away. At that time, some villagers caught hold him. Accordingly he blamed appellant for the incident.

4. Evidence of P.W. 3 has been heavily relied upon by the trial Court to find nexus of appellant with the crime. However, we have noted that while deposing in the Court, P.W. 3 has stated half of the story. He stated that sarpanch of village informed him that appellant committed murder of Bukalibai (appellant's wife). Thereafter he went to the house of Bukalibai. He saw her lying on bed with blood stains on her body. He saw injuries on her ear and head. Then comes vital twist.

He reported to police that he enquired with appellant about cause of death whereas in the evidence before the Court, he said that Kisan was not present in the house. Another twist is that while reporting incident, he said that appellant made an attempt to flee away and villagers caught hold him. However, before the Court, he said that people apprehended appellant. He has however not given other details viz. how and where was appellant apprehended. None of the villagers, who allegedly apprehended appellant, have been examined by the prosecution.

5. Learned counsel for the appellant has not disputed the homicidal death of Bukalibai. His argument is that the prosecution has withheld the best evidence and further that the testimony of P.W. 3 is not sufficient to sustain appellant's conviction.

6. The reason, why the appellant's counsel has argued that best evidence is withheld, is because one of the daughters of appellant, namely, Saraswati, who allegedly witnessed the crime, was not examined by the prosecution. Learned counsel has invited our attention to testimony of prosecution witnesses where as many as four witnesses, namely, P.W. 1, P.W. 2, P.W. 5 and P.W. 6 were said to have been informed of the incident by Saraswati. These witnesses have not supported the prosecution version. Learned Additional Public Prosecutor (APP),

however, put up a case that they were all informed of the incident by Saraswati. Case is further put up that, she (Saraswati) intervened in the quarrel requesting appellant to not beat her mother saying that she will die. This case, as put up by prosecution to its own witnesses, is denied.

7. Thus, it is evident that Saraswati had witnessed the incident. The prosecution, however, did not examine Saraswati for the reasons best known to it. In any case, these four witnesses i.e. P.W. 1, P.W. 2, P.W. 5 and P.W. 6 have not witnessed the incident. The prosecution, however, in cross-examination put up a case that Saraswati had informed them of the incident. Thus, the testimony of these witnesses is based on what Saraswati had informed them. In that sense, their evidence would be hearsay evidence and not admissible. Learned APP has assigned no reasons why was Saraswati not examined.

8. Learned APP has invited our attention to the evidence of P.W. 5 where he admitted case put up by the prosecution saying that he asked appellant why did he beat deceased, to which, appellant requested him to take care of his children. He further admitted that appellant ran away from the spot of incident. Thus, according to learned APP, the presence of appellant at the spot is proved.

9. This argument has been rightly countered by the counsel for appellant. He has invited our attention to the cross-examination, where he admitted that on the day of incident, he was not in the village. Thus, whatever was brought on record by the prosecution is washed away by the fatal admission given by the witness that on the day of incident, he was not in the village. Evidence of P.W. 5 is, therefore, of no help.

10. So far as other evidence is concerned, P.W. 4 is a panch witness to the spot panchanama. He deposed that police, in his presence, seized simple earth, blood mixed earth, quilt, blood stained quilt, blood stained blanket and blood stained axe with wooden log. Spot panchanama was prepared. The articles were seized. This evidence, however, is not sufficient to connect appellant with the crime.

11. What remains, thus, is the testimony of P.W. 3. As noted above, his testimony is *sans* material ingredients to prove appellant's presence at the spot at the relevant time. Rather, he deposed that appellant was not present at the house when he reached. The only statement in his evidence, which requires consideration, is that people had caught appellant. P.W. 3 has, however, not given details as to when was appellant caught, where was appellant caught and how was appellant caught. In the cross-examination, he deposed that when he

reached the house, 50 to 60 people were present. He then said that he cannot tell their names.

12. We find it difficult to digest that P.W. 3 could not name a person who was present at the spot. Had he disclosed names of few people who allegedly caught appellant, the vital details of his presence at the spot could have been substantiated. In fact, if appellant was caught by the villagers, the Investigating Officer should have recorded the statement of, at least, one such person who had apprehended the appellant. The prosecution has not examined any person from village who allegedly caught appellant while attempting to flee away from the spot. Thus, the testimony of P.W. 3 will prove at the most appellant's apprehension near his house. Such evidence will only turn the needle of suspicion towards appellant but will not amount to proof of his involvement in the crime. The law is well settled that suspicion, however strong, cannot take the place of proof.

13. The evidence of P.W. 3, therefore, is not sufficient to prove that appellant has murdered his wife.

14. Learned APP submits that since the incident occurred in the house where appellant, his wife and daughters were residing, the burden was upon the appellant to explain how did deceased sustain

fatal injuries in the house. He has taken aid of Section 106 of the Indian Evidence Act.

15. We are not impressed with the argument. The initial burden was upon the prosecution to prove that except for appellant and deceased, there was no one else in the house. The evidence, however, indicates that Saraswati was also in the house and had witnessed the incident. The prosecution has not examined Saraswati nor has given any explanation for not examining her. The best evidence having been suppressed, the prosecution will have to suffer consequences. In the circumstances, the prosecution having failed to discharge initial burden, it cannot take aid of Section 106 of the Indian Evidence Act to expect appellant to have exclusive knowledge of what transpired in the house.

16. The trial Court has culled down following points to infer that chain of circumstances is completed.

“33. Upon consideration of entire evidence available on record, following facts have been clearly proved by the prosecution; -

(A) The accused and deceased Bakuli were husband and wife.

(B) On 09.07.2019, deceased Bakuli met with homicidal death.

(C) Fatal injuries were found on her forehead and ear.

(D) Axe was seized from the spot.

- (E) Seized axe was examined by Dr. Shrikant (PW-7) who opined that death is possible by the axe. He further deposed that injuries inflicted on the body of deceased Bakuli could be caused by the axe.*
- (F) The accused ran-away from the spot and was caught by people.*
- (G) Forensic Report (Exhibit No.50) shows that blood was found on the shirt of the accused.”*

In our view, the facts noted under clause (A) to (E) and (G) will be relevant only if fact noted in clause (F) is established. The trial Court held that appellant ran away from the spot and was caught by people. This finding is based on contents of First Information Report (FIR) and not on substantive evidence of P.W. 3. The trial Court committed error of law by relying upon contents of FIR. It is so because the contents of FIR is a corroborative piece of evidence and is otherwise taken aid of to support prosecution case by examining informant or to test his veracity by pointing out to him as to what he has stated before police. Thus, the contents of FIR could have been referred to corroborate the prosecution version or to prove omission and/or contradiction in his testimony. The contents could not have been taken as substantive piece of evidence. In the present case, nothing prevented the prosecution to get on the record during the evidence of P.W. 3, the other part of FIR which relates to P.W. 3's interaction with appellant and further that appellant made an attempt to flee away from the spot but villagers caught hold of him.

17. As noted earlier, P.W. 3 in his evidence has not given material facts as regards appellant's presence at the spot. The prosecution did not examine any other witness to prove appellant's presence at the spot. That being so, the finding of the trial Court that appellant ran away from the spot and was caught hold by the people is a finding without such evidence. In absence of proof of his presence at the spot, the facts/circumstances mentioned by learned trial Court in paragraph no. 33 will be of no help to bring home the guilt of appellant. The evidence is not sufficient to prove appellant's involvement in the crime. The benefit of doubt will have to be extended to the appellant. Resultantly, following order is passed.

ORDER

- (i) Appeal is allowed. Judgment and order dated 28-6-2023 passed by Additional Sessions Judge-2, Achalpur in Sessions Case No. 205/2019 is quashed and set aside.
- (ii) The appellant shall be released forthwith, if not required in any other case.

(NIVEDITA P. MEHTA, J.)

(Anil L. Pansare, J.)