



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.359 OF 2023

Vijay s/o Kishan Dhillod
Age : 35 yrs, occ : nil
R/o Bhimnagar, Bhavsingpura,
Aurangabad

Appellant

Versus

The State of Maharashtra
Police Station Sadar Bazar,
Jalna

Respondent

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Mr. Soheli Siddiqui, Advocate for the appellant.
Ms. S.N. Deshmukh, A.P.P. for the respondent-State.

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**CORAM : NITIN B. SURYAWANSHI AND
SANDIPKUMAR C. MORE, JJ.**

Judgment reserved on : 11 June 2025
Judgment pronounced on : 24 June 2025

Judgment (Per Sandipkumar C. More, J.) :

1. By way of this appeal, the appellant/original accused Vijay Kishan Dhillod has challenged his conviction recorded by the learned Sessions Judge, Jalna (hereinafter referred to as "the learned trial Court") in Sessions Case No.47/2022 under the impugned judgment and order dated 05.12.2022, for the offence punishable under Section 302 of the Indian Penal Code (for short, "I.P.C."). The learned trial

Court, under the impugned judgment, has sentenced the appellant/accused to suffer rigorous imprisonment for life and to pay fine of Rs. 5,000/-, i/d to suffer rigorous imprisonment for three months.

2. As per the prosecution case, the informant Jyoti Vijay Dhillod i.e. PW-1 is the wife of appellant/accused and their marriage was solemnized in the year 2005. Both of them are having six children out of the wedlock. Since the appellant/accused used to beat the informant by taking doubt on her chastity, she started residing with her mother Sakhubai Kale i.e. the deceased, at Jalna alongwith her children. However, the appellant/accused used to come to Jalna for insisting her to come with him at Aurangabad with their children. Informant Jyoti and her mother used to oppose such insistence of the appellant/accused, and therefore, the appellant/accused was threatening them of dire consequences. Two to three days prior to the incident the appellant/accused had come to Jalna and was insisting the informant to go with him for cohabitation. Due to fear of the appellant/accused, the informant was residing in the vicinity of bus stand. She was doing labour work at brick kiln near Noorshah Ali Dargah at Jalna and while going to work, she

used to drop her children with her mother Sakhubai who was doing job of Watchman at Marble Palace in the shop of one Kumawat.

3. On 22.11.2021 the informant started for home after finishing labour work at about 9.30 p.m. As the appellant/accused had come to Jalna, she remained in the area of bus stand. Thereafter anticipating that the appellant/accused might have left the house of her mother Sakhubai, she started to go to the house of her mother at about 12.00 to 12.30 hrs in the midnight. When she was proceeding to the house of her mother, her 10 years old son Yash came there on the bridge and told her that the accused assaulted his grandmother with piece of tile and knife. On hearing the same the informant rushed to the house of her mother Sakhubai at Marble Palace alongwith her son Yash. At that time she saw Sakhubai lying down in the pool of blood and her other sons namely Jayesh and Krishna were crying near her body. On making further enquiry, her son Yash told her that the appellant/accused had come there and hit Sakhubai on her head with piece of tile and knife. When the informant raised shouts, the people nearby gathered there and one of those persons by name Golu Badhai i.e. PW-4 intimated

about the incident to police. Accordingly, police came there and the informant lodged report against the appellant/accused as per Exh.14. On the basis of the said report, First Information Report (F.I.R.) in printed form was also registered and investigation of the crime started. On completion of investigation, the appellant/accused was charge-sheeted for the offence punishable under Section 302 of I.P.C. and under Section 85 (1) (2) of the Maharashtra Prohibition Act.

4. The learned trial Court conducted the trial and convicted appellant/accused as mentioned above.

5. The learned Counsel for the appellant/accused vehemently argued that the learned trial Court did not appreciate the evidence in proper perspective. Moreover, the charge against the appellant/accused was also not properly framed. According to him, the learned trial Court erroneously relied on CCTV footage. He pointed out that the informant was not an eye witness and the complaint (Exh.14) was not an F.I.R. but in fact it was an intimation given by PW-4 Golu to the police about the incident. He further submitted that the evidence of only eye witness i.e. son of the informant namely

Yash cannot be believed, specially when being a son of the informant he must have deposed at the instance of his mother. He pointed out that no articles used for commission of murder namely wooden log, knife and piece of tile, were shown to this eye witness. He further submitted that the medical evidence on record is also not sufficient to connect the appellant/accused with the crime. According to him, the discovery of piece of tile was doubtful as on the place of recovery, so many tiles were present. He pointed out that the electronic evidence in the form of CCTV footage is also not admissible as the witness deposed for the same was not authorised to issue certificate under Section 65 (B) of the Indian Evidence Act. He specifically pointed out that no blood was found on the clothes of the accused, and therefore, there is no reliable evidence on record as to the presence of accused on the spot. Therefore, he submitted that the evidence of prosecution is well short to convict the appellant/accused for the offence alleged. Finally he requested for setting aside the impugned judgment and for acquittal of appellant/accused. He relied on the judgments in the cases of *Shankar Babarao Agaldare vs State of Maharashtra, 2018 ALL MR (Cri) 3410* and *Ramkrishna Sitaram Darwate vs State of Maharashtra, 2018 ALL MR (Cri) 3855*.

6. On the contrary, the learned A.P.P. strongly supported the impugned judgment and pointed out that the prosecution with the help of clinching evidence has clearly established the guilt of accused beyond all reasonable doubts. According to her, the contents of complaint are well corroborated by the evidence of eye witness PW-2 i.e. the son of informant and the accused, whose presence on the spot was natural. Further, the said eye witness in the cross-examination has clearly denied the aspect of tutoring and considering the sanctity attached to the evidence of child witness, guilt of the accused is definitely established. She pointed out that death of Sakhubai was homicidal and due to evidence of eye witness, there was no necessity at all to show the articles used as murder weapons, to the eye witness. According to her, even if evidence in the form of CCTV footage, which indicated the presence of accused on the spot of incident at the relevant time, is kept aside, then also the other evidence on record is clearly sufficient to record the conviction against appellant. She submitted that the prosecution has examined in all 11 witnesses who have established complete chain of circumstances against the appellant/accused in respect of commission of murder by him. Thus, the learned A.P.P. prayed for dismissal of appeal.

7. Heard rival submissions. Also perused the impugned judgment alongwith record and proceeding of the original sessions case.

8. On going through the record, the prosecution has examined in all 11 witnesses including the informant Jyoti as PW-1 and her son Yash as PW-2 being an eye witness. The other evidence on record is in the form of corroboration. On going through the impugned judgment, it appears that the learned trial Court has convicted the appellant/accused mainly on the evidence of eye witness PW-2 Yash by observing that his presence on the spot was but natural and he had given true accounts of the facts as he had every opportunity to watch the incriminating act of the appellant/accused. Further, it is observed by the learned trial Court that the informant Jyoti and PW-2 Yash have corroborated each other on material aspects and the medical evidence as well as electronic evidence also supported the case of prosecution. It was also observed by the learned trial Court that after commission of crime, the appellant/accused was immediately found in the same vicinity which confirmed his arrival on the crime scene. Therefore, in the backdrop of these facts, the evidence of prosecution has to be scrutinized to ascertain

whether there is any scope for extending benefit of doubt to the appellant/accused as argued.

9. Admittedly, informant Jyoti is the wife of present appellant/accused. It has already come on record that relations between them were strained since the appellant / accused used to take doubt on her chastity. Further, it is not seriously disputed that due to strained relations, informant Jyoti was residing separately from the appellant in the house of her mother Sakhubai i.e. the deceased, at Jalna. It can also be seen from the record that the appellant/accused was insisting Sakhubai to send the informant to him for cohabitation. According to the prosecution, the applicant/accused, at the time of incident, had gone to the house of deceased Sakhubai for insisting her to send the informant with him and on refusal of the same, he assaulted Sakhubai with the help of piece of tile, wooden log and knife and inflicted grievous injuries on her head resulting into her death. From the evidence of PW-3 Dr. Raju Jadhav and injury certificate issued by him, the injuries sustained by deceased Sakhubai on her head have come on record, suggestive of her homicidal death. Further, PW-3 Dr. Jadhav has also opined that death of Sakhubai occurred due to

hemorrhagic shock due to head injury. He has also clearly admitted that the injuries found on the person of deceased Sakhubai was possible by piece of tile, wooden plank and knife which he had inspected when sent to him by the investigating machinery. Though he has admitted in the cross-examination that the injuries sustained by deceased Sakhubai were also possible by any other sharp weapon and other articles like stone, iron rod, Gupti etc. but here in this case the eye witness i.e. son of the appellant and informant, has stated about the incident in detail referring to the articles mentioned by PW-3 Dr. Jadhav in his opinion Exh.23 being the weapons of murder. Therefore, the evidence of informant as well as eye witness PW-2 Yash carries immense importance in the instant case. The remaining evidence is corroborative in nature.

10. So far as the evidence of informant i.e. the wife of the appellant is concerned, she is not an eye witness to the incident, but received information about the incident from her PW-2 Yash. The informant has specifically stated that when she started to the house of her mother Sakhubai at 9.30 p.m., she got information about arrival of the appellant/accused to her mother's house, and therefore, she waited at

bus stand till 12.00 in the intervening night of 22.11.2021 and 23.11.2021. When she started around 00.00 hrs to 00.30 hrs in the midnight, she met with her son Yash i.e. PW-2 in between, who told her that the appellant killed Sakhubai with the help of aforesaid articles. After reaching to the house of deceased Sakhubai, she saw the Sakhubai lying in the pool of blood and thereafter on the intimation of PW-4 Golu, police came there and thereafter she went to police station and lodged report of the incident. As such, the only eye witness in this case is PW-2 Yash, who is the son of informant and appellant.

11. PW-2 Yash is a child witness and was about 10 years old at the time of incident. According to him, he alongwith his other brothers Krishna, Deepak and Jayesh were present in the home at the time of incident and his elder brother Ghansham had gone for work. His mother was also not in the house and his sister had gone to maternal aunt's house. He has specifically stated that the appellant/accused when came home, his grandmother Sakhubai had woken him up and told him to serve water to his father. As such, presence of this witness on the spot of incident was very much natural. This witness has further stated that the

appellant/accused, at the relevant time, was insisting for sending his mother with him for which his grandmother was not ready. Thus, as per this witness, the appellant/accused got angry with such refusal and assaulted his grandmother with the help of tile and hit the same on her head. This witness has further stated that the appellant/accused then with the help of wooden plank hit his grandmother and then also by means of knife inflicted injury to his grandmother. This witness has specifically stated that he did not raise any alarm as he feared that the accused would also kill him. Thus, the reason for not raising alarm at the time of incident is quite justified. However, after the appellant/accused left, he immediately went to search his mother who met him on the way. Then he narrated entire incident to the informant, who subsequently lodged report of the incident. Thus, the evidence of this eye witness PW-2 Yash is well supported by the informant who, on the basis of information gathered from PW-2 Yash, lodged report of incident which is as per the narration of this witness.

12. Learned Counsel for the appellant/accused strongly submitted that the evidence of PW-2 Yash cannot be believed because he was just a child of 10 years and was

residing with informant, and therefore, the possibility of tutoring cannot be ruled out. Admittedly, sanctity is always attached to the evidence of child witness and in so many cases the child witness is believed due to innocence of the witness. It is significant to note that before believing the evidence of child witness the only precaution is to be taken is to see whether it is free from tutoring, because the child witnesses often tend to depose as per the say of their close relatives.

13. Learned Counsel for the appellant/accused further submitted that PW-2 Yash was residing with his mother before and after the incident till recording of his statement, and therefore, his evidence has certainly become doubtful. However, it is extremely important to note that in the cross-examination itself a suggestion is given to this witness that he was already told or taught as to how he should depose before the court. However, this witness has straightway denied such suggestion and stated that he was never taught by anyone as to how he should depose in the court. Further, such suggestion in respect of tutoring was again given to him in the cross-examination to which he flatly denied. Therefore, on the face of it the evidence of this

witness, even being a child witness, appears reliable and trustworthy as it is also supported by other corroborative circumstances or material on record. Therefore, it would rather be safe to rely on his testimony in the light of other corroborative circumstances.

14. Learned Counsel for the appellant/accused relied on the judgment of this Court in the case of ***Shankar vs State of Maharashtra*** (supra) wherein the evidence of child witness was not relied upon due to aspect of tutoring, and therefore, benefit of doubt was given to the accused in the said case. However, there were circumstances on record in that case to establish that the said child witness was a tutored one and that his evidence was not supported by other circumstances on record. In the present case the evidence of PW-3 Dr. Jadhav regarding the injuries sustained by deceased Sakhubai is well corroborated by the evidence of PW-2 Yash who had specifically stated that the deceased was assaulted on her head with the help of piece of tile, knife and wooden plank by the appellant/accused. As such, the observation of this Court in the case of ***Shankar vs State of Maharashtra*** (supra) cannot be applied here, considering the peculiar facts of this case.

15. The evidence of PW-4 Tushar @ Golu Raju Badhai is not of that significance since he had only intimated the police about occurrence of the incident when he saw son of the informant i.e. Ganesh in crying condition around 12.00 hrs to 1.00 a.m. on 23.11.2021. Though this witness had not seen the actual incident, but whatever he stated, definitely corroborates the version of the informant.

Further, PW-5 Anil Kakade is a police constable who had carried muddemal articles in the present crime to Forensic Science Laboratory, Aurangabad. He has given true accounts of the act performed by him and nothing doubtful is found in his evidence during his the cross-examination.

16. So far as recovery of piece of tile used in commission of crime by the appellant/accused is concerned, the evidence of PW-6 Vijay Sadarwate is of immense importance. As per the evidence of this witness he was called as a panch in Sadar Bazar police station on 29.11.2021. According to him, the appellant/accused was in police custody at the relevant time who voluntarily made a disclosure statement as to where the piece of tile, which he had used for commission of crime, was hidden by him. A

memorandum to that effect was also recorded by police in his presence. Thereafter this witness has deposed as to how the said piece of tile was recovered at the instance of accused. He has specifically deposed that he alongwith police, accused and other panch had gone to Marble shop where the accused had kept the piece of tile. He specifically stated that the appellant/accused, after reaching to the Marble shop, produced the said piece of tile which was kept behind big marble pieces. He also deposed that there were blood stains on the said piece of tile which was seized and sealed by Investigating Officer.

17. Learned Counsel for the appellant/accused tried to argue that the said recovery of the tile at the instance of accused is doubtful because it was seized from the open place which was accessible to all. However, it is not the case of prosecution that the appellant/accused produced the said piece of tile from the various pieces of tiles lying on the open land. On the contrary, PW-6 Vijay has stated that the accused put his hand behind big marble pieces and took out one piece of broken tile having blood stains over it. The very act of appellant/accused suggests that only he was having special knowledge as to where the said piece of tile was

hidden. As such, from the evidence of this witness, the discovery of piece of tile used in commission of crime has been fully established. Nothing adverse in the cross-examination of this witness has come on record which is favourable to the accused.

18. The evidence of PW-7 Sandip Wankhede is mainly in respect of spot panchnama wherein it is established that the deceased was lying on the spot in pool of blood with severe head injury. Further, a blood stained wooden plank and blood stained knife were also found on the spot which were seized by police. Further, this witness also deposed that they checked CCTV footage wherein the accused was seen on the spot of incident at the relevant time and had scuffled with the deceased. Likewise, the appellant/accused was also seen in the said CCTV footage while going out of the compound while climbing the gate. Nothing is brought on record in the cross-examination of this witness besides mere denials. As such, the situation on the spot of incident definitely supports the versions of informant as well as eye witness Yash.

19. Further, the evidence of PW-8 Milind Ghorpade indicates that he was called by police as a panch for seizure of

clothes of the appellant/accused which were stained with blood. This witness has deposed as per the prosecution story and nothing adverse is brought on record during his cross-examination.

20. The evidence of PW-9 i.e. P.S.I. Rajendra Wagh indicates that on receiving information of crime at about 1.00 a.m. on 23.11.2021 he went to the spot of incident where the deceased Sakhubai was found in dead condition lying in pool of blood in her house. He further deposed that the informant told him about the incident and the manner in which the appellant/ accused assaulted the deceased. Further, it has come in the evidence of this witness that the accused was found in Gandhi Chaman area in drunken condition and he was brought to the police station. Thus, this witness has established the fact that the accused was found just after the incident in the close vicinity of the spot of incident. Except denial, there is nothing in the cross-examination of this witness.

21. The evidence of PW-10 Ram Shrikant Jadhav is in respect of electronic evidence. This witness is CCTV technician who had installed CCTV system in Marble Palace

shop at the instance of its owner Kumawat. This witness in presence of shop owner Kumawat and P.S.I. Rupekar i.e. Investigating Officer, had extracted CCTV footage in one San Disk pen drive and accordingly issued certificate under Section 65B of Indian Evidence Act. In the evidence of this witness it has come on record that when the CCTV footage was seen, it was revealed that the accused had entered in the Marble Place shop at about 12.11.28 seconds and thereafter deceased alongwith three children was seen walking towards the gate. Thereafter around 12.32 a.m. the person who entered into the shop was seen having scuffle with the deceased. Therefore, in the evidence of this witness it is established that there was some scuffle between deceased and appellant/accused at the time of incident, but thereafter both of them moved out from the range of CCTV camera. However, the appellant/accused was found running towards the gate at about 12.42 a.m. Admittedly, the learned trial Court has relied on the testimony of this witness and treated the same as corroborative evidence to establish the guilt of accused. However, the learned Counsel for the appellant/accused raised so many doubts as to how this evidence is not admissible for want of certificate under Section 65B of Indian Evidence Act by appropriate person. According to him, the

device from which the CCTV footage was obtained, was not seized by the Investigating Officer, and therefore, this technical evidence has become doubtful. Admittedly, stringent technicalities are attached to production of electronic evidence and in absence of such technicalities, the electronic evidence becomes inadmissible. However, in the instant case even if the electronic evidence in form of CCTV footage is kept aside, then also there is strong evidence on record against the appellant/accused in the form of an eye witness supported by other evidence.

22. Further, the C.A. report (Exh.61) indicates that human blood was found on the seized knife and tile which according to the evidence of PW-2 Yash was used by the appellant/accused for inflicting blow on the head of deceased. Further, C.A. report at Exh.64 clearly indicates that blood of Group 'B' was found on the wooden log allegedly used by the appellant/accused for giving blow on the head of deceased. It is important to note that the blood group of deceased was 'B' and the same was found on said wooden log. As such, the presence of human blood on the tile as well as knife and the blood of deceased on wooden plank definitely supports the evidence of eye witness PW-2 Yash. It is important to note

that there is no explanation from the accused as to the presence of human blood and the blood of deceased on the aforesaid articles. Therefore, even if the electronic evidence in form of CCTV footage is kept aside, then also there is strong evidence on record against the appellant/accused.

23. The evidence of PW-11 i.e. Investigating Officer Rupekar is merely on procedural aspect and nothing adverse has been brought on record during his cross-examination from the side of appellant/accused. Therefore, considering the entire material on record coupled with oral and scientific evidence, the prosecution has succeeded in establishing guilt of the accused beyond all reasonable doubts.

24. So far as motive for commission of such crime is concerned, the informant has already stated that there were strained relations between herself and appellant/accused, and therefore, she was residing with her mother i.e. the deceased. Further, it has also come on record that despite residing at Aurangabad the appellant/accused used to come to Jalna for insisting the informant and her mother to send the informant with him alongwith the children. Obviously due to earlier disputes the deceased used to refuse the

requests made by appellant/accused. As such, the appellant/accused was definitely having grudge against the deceased and the incident had in fact taken place due to same reason.

25. Learned Counsel for the appellant/accused tried to argue that the offence of murder cannot be established since there was quarrel between deceased and accused prior to the incident and the accused might have committed the offence resulting out of such quarrel. Therefore, the learned Counsel for the appellant suggested that act of the accused is covered under Section 304 Part II of the I.P.C. It is significant to note that motive and intention are the important aspects to determine as to whether the act of accused is treated as murder. In the instant case, admittedly some altercation must have occurred between the accused and deceased, but whether it falls under the definition of murder or culpable homicide, depends on the manner in which the deceased was assaulted. Here in this case it is not the case of prosecution that after altercation with the deceased, the accused had given only single blow resulting into the death. On the contrary, it has been established that the appellant/accused assaulted the deceased i.e. an old lady mercilessly by three

articles namely piece of tile, wooden plank and knife. As such, this cannot be a case involving death due to single blow. Further, it is extremely important to note that it is not the case that accused assaulted the deceased with knife which was in the house of deceased itself. On the contrary, it is established that the accused had in fact carried knife with him. Therefore, the manner in which the accused assaulted the deceased with predetermination, definitely indicates that he is guilty of the offence of murder and not culpable homicide. Therefore, considering all the evidence on record, it has been established that the appellant / accused is guilty of murder i.e. the offence punishable under Section 302 of I.P.C. and considering the same no benefit of doubt can be extended to him on re-appreciation of evidence. Therefore, the learned trial Court has rightly considered the entire evidence on record in proper perspective and rightly convicted the appellant/accused for the offence punishable under Section 302 of I.P.C. Under such circumstances, we find no reason to interfere with the impugned judgment. Accordingly, the appeal stands dismissed.

(SANDIPKUMAR C. MORE)
JUDGE

(NITIN B. SURYAWANSHI)
JUDGE