

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 421 OF 2016

Ramesh Ramprasad Maurya ... Appellant

Vs.

The State of Maharashtra ... Respondent

Mrs. Miskin Sonia for the Appellant

Mr. V. B. Konde-Deshmukh, APP for Respondent – State

**CORAM : NITIN W. SAMBRE &
R. N. LADDHA, JJ**

DATED : 25TH JANUARY, 2023

ORDER (Per Nitin W. Sambre, J.) :

1. This appeal is by the accused against the judgment of conviction delivered in Session Case No. 878 of 2013 by Additional Session Judge, City Civil & Sessions Court, Greater Bombay. Vide impugned judgment and order dated 15/12/2015, the appellant / accused - Ramesh came to be convicted u/s. 235 of Cr.P.C. for the offence of murder punishable u/s. 302 of IPC and is sentenced to undergo imprisonment for life and fine of Rs.1,000/-, in default directed to suffer simple imprisonment for three months.

2. The facts necessary for deciding the present appeal are as under:

3. The appellant/accused was married to deceased - Meena and was blessed with two children viz. Sanket, P.W. No. 2 and Sumran. The appellant was addicted to liquor and under influence, used to pick quarrel with deceased - Meena on one or other pretext and used to physically assault her.

4. On 30/06/2013, deceased - Meena was assaulted by the appellant by kitchen knife after they had quarreled on the pretext of deceased - Meena refusing to fetch water. As a sequel of above, Meena was shifted to KEM hospital by the appellant where she was declared dead. Since the death was homicidal, on an intimation from KEM hospital, P.W. No. 1-Maruti Kadam, PSI visited the said hospital. It is claimed that during inquiry with the appellant, the appellant narrated that deceased-Meena has committed suicide by piercing kitchen knife on her own, in chest thereby causing serious injuries resulting into her death.

5. P.W. No. 1 Maruti after having taken the appellant in

confidence informed to have disclosed that he has attacked deceased-Meena by using weapon i.e kitchen knife. In view of above, P.W. No. 1-Maruti Kadam, PSI lodged FIR resulting into registration of Crime No. 90 of 2013 punishable u/s 302 of IPC.

6. Smt. Sonia Miskin appointed counsel for the appellant would urge that the conviction of the appellant is based on the circumstantial evidence as the evidence of P.W. No. 2 child witness i.e. son of the deceased cannot be relied on as he was tutored. According to her, said witness has refused to identify the appellant. She would further urge that the testimony of the P.W. No. 1-Maruti Kadam, PSI cannot be accepted particularly when the principle of self incriminating statement by the accused is not admissible in the evidence. He would further urge that P.W. No. 3 is not an eye witness to the incident but only has seen the appellant carrying the deceased-Meena to the hospital and as such, her testimony cannot be sufficient to infer the involvement of the appellant in the offence.

7. She has urged that the evidence / history recorded by doctors in medical papers of the KEM hospital sufficiently speaks

of the innocence of the appellant as deceased-Meena before her death has narrated to the doctor that injuries are self inflicted. According to her, the testimony of P.W. No. 5 speaks of only differences of appellant and deceased Meena. That being so same cannot be said to be incriminating against the appellant. As such, she would urge that the prosecution has failed to prove the guilt of the appellant beyond reasonable doubt.

8. Mr. V. B. Konde-Deshmukh, learned APP, would support the judgment of conviction. According to him, the testimonies of P.W. No. 1 and P.W. No. 2 even if they have not supported in entirety the case of the prosecution and testimony of P.W. No 3 sufficient enough to bring home the guilt of the appellant/accused.

9. He would rely on the admission of Exhibit 15-spot panchanama, Exhibit 16-inquest panchanama and Exhibit 17-arrest panchanama. By relying on the testimony of the aforesaid three witnesses, he would urge that the appeal deserves dismissal.

10. We have appreciated the rival submission.

11. P.W. No. 6-Mr. Bhagwat, investigating officer has recorded statement of P.W. No. 1-Maruti Kadam, PSI, complainant is examined at Exhibit-11, P.W. No. 2-Sanket, son of the appellant was at the relevant time aged about 4 years, is examined at Exhibit-13, P.W. No. 3-Darshana, a neighbour, is examined at Exhibit-14, P.W. No. 4-Dr. Girish who has performed postmortem at Exhibit-20, P.W. No. 5-Saraswati, mother of the deceased-Meena, is examined Exhibit-21. P.W. No. 6-Bhagwat, investigating officer is examined at Exhibit-23.

12. P.W. No. 1-Maruti, who was on duty at the time of incident was deputed in the police station deposed that he has received message on 30/06/2013 at 6.30 a.m in morning that Meena was admitted in KEM hospital by her husband i.e. appellant. He was informed that there was a quarrel in between the deceased-Meena and the appellant. He was also informed that deceased-Meena has herself inflicted injuries by knife on her chest and doctors have declared her dead at the time of admission. He further deposed that he has seen the appellant present in the hospital with deceased-Meena and upon inquiry noticed objectionable response

of the appellant. He has stated that the accused has deposed that he had quarrel with his wife in the morning at 5.00 AM and as such the appellant has attacked his wife with kitchen knife causing serious injuries. Accordingly, he has lodged FIR which is proved at Exhibit - 12.

13. In cross-examination he has stated that after having received a message at 6.30 AM, he had reached KEM hospital at 7.15 AM. He has also stated that doctor while recording history of patient has noted that deceased has mentioned about self inflicted injuries. He has also stated that deceased has claimed that in view of quarrel, she was prompted to inflict injuries to herself.

14. P.W. No. 2-Sanket, son aged about 4 years who is examined at Exhibit-13 has stated that his mother is attacked by the appellant with kitchen knife in the night which was witnessed by him. However, he has refused to identify the accused i.e. his father. He has also identified knife which was used by the appellant being Article-A. However, in his cross-examination he has stated that he is deposing as has been told to him by his brother. As such, the testimony of such witness needs to be

appreciated with much care and precaution.

15. P.W. No. 3-Darshana has stated that accused and deceased-Meena residing in her neighborhood and deceased-Meena was second wife of the appellant. She has stated that appellant used to consume liquor. She has seen accused taking out Meena by covering her body in bed-sheet at 5.45 am in the morning. She has stated that the appellant has confessed to his mother that after having quarrel with deceased-Meena, he has assaulted her with knife. In her cross-examination she has stated that accused is residing opposite to her house. She has stated about certain omissions as regards inquiries caused by her mother with the accused.

16. P.W. No. 4-Dr. Girish in his examination-in-chief has stated that he has performed postmortem of deceased-Meena and has proved the postmortem report at Exhibit-19. He has stated that viscera was preserved and forwarded for further analysis including that of nail clippings and air dried blood drop. He has specifically stated that the injury no. 1 in column 17 can be caused by a pointed and sharp edged weapon like the article 1-knife. He has

stated that the injury no. 1 and 2 stated in column no. 17 can also be caused by the patient herself by self infliction.

17. P.W. No. 5-Saraswati, mother of the deceased-Meena who is examined at Exhibit-12 has stated that her daughter-Meena was married to Ramesh in the year 2000 and Meena was always complaining about alcoholic habit of the appellant and physical assault by the accused. She has stated that sons - Sanket and Sumran were born out of wedlock of the accused with deceased-Meena. She has stated that it is out of the aforesaid cruel act of the appellant, she has withdrawn Meena from the company of the appellant in 2011. She has also stated that Meena used to narrate her about the cruel acts viz quarrel and assault by the appellant on phone. In her cross-examination, she has stated that she is unaware about the time and date of such complaints which were made by Meena about the above referred conduct of the appellant. She has stated that she was informed by the police about the death of Meena.

18. P.W. No. 6-Mr. Bhagwat, investigating officer has stated that he had received a message while he was on duty on 29/06/2013

from KEM hospital that the appellant had brought his wife for treatment, however, she was expired before her admission to the hospital. According to him, he was also informed through above message that deceased had quarrel with the appellant for domestic reasons and she herself has inflicted injuries by knife. According to him, when he visited the hospital, the accused was present with the dead body in the OPD wherein the appellant has disclosed that it is because of domestic quarrel, deceased inflicted injuries to her. He has stated about details of the injuries suffered by deceased-Meena and has proved seizer of cloths with blood stains of the deceased vide article 2-saree, article 3-blouse, article 4-peticot, article 5-label containing his signature and signature of panchas, labels 6 & 7-which contains his signatures as regards sealing of other articles viz. blouse, peticote.

19. He has stated that he has examined the spot of the incident carefully and has noticed blood stains on the ground so also blood stained knife was kept on the wall of the bathroom. He has seized lungi lying on the ground having blood stains. Same was sent alongwith the article 1 by attaching article 1A label, for analysis. He has stated that he has arrested the accused on 30/06/2013. He

has sought opinion of doctor from KEM hospital vide Exhibit-24 which was duly responded by forensic department of KEM hospital at Exhibit-25. He has proved Exhibit-26 sending all the articles viz. knife, cloths, cotton swab for chemical analysis. He has also proved through Exhibit-27 collectively sending of muddemal articles, nail clipping and air dried blood drops. Exhibit-28 is CA report which is rightly so inferred to have been proved under the provisions of 293 of Cr.P.C. In cross examination, he has stood by the prosecution story.

20. The innocence of an accused is pre-supposive principle in a criminal trial. It is for the prosecution to establish the guilt of the accused. While establishing such guilt, the prosecution is required to bring on record the material in the form of clinching evidence so as to prove the guilt of the accused. Merely proving guilt of the accused is not sufficient, such proof is required to withstand the guilt beyond the reasonable doubt. In support of aforesaid principle, reliance can be placed on the judgment of the Apex Court in the matter of **Rageevan and another Vs. State of Kerala** reported in **(2003) 3 SCC 355**.

21. In the matter of confession made to a Police Officer, the principle as laid down U/Sec. 25 of the Evidence Act provides inadmissibility of such confession. The conviction of the accused cannot be sustained on the basis of the confession made to a police officer. In support of above principle, reliance can be placed on the judgment of the Apex Court in the matter of **Faqir Chand Vs. Ram Ratan Bhanot** reported in ***AIR 1973 SC 922***.

22. As regards the evidence of a child witness is concerned, it will not be out of place to record that an evidence of a child witness is required to be considered with utmost caution. An evidence of child witness can be relied on for achieving conviction in a case of accused is charged with murder provided testimony of such child witness is consistent and corroborative with the testimony of other independent witnesses. A support can be drawn from the judgment of the Apex Court in the matter of **State Vs. Vijay** reported in ***AIR 1980 SC 1621*** so as to appreciate the aforesaid legal principle. As such, if we evaluate evidence available on record in the backdrop of legal principles as mentioned hereinabove, what can be noticed is P.W. No. 1-Maruti, PSI received message about incident in question after the

deceased Meena was admitted in KEM Hospital by Appellant/accused, her husband. He had stated that she had quarrel with him and thereafter she had pierced sharp weapon in her own chest. He has stated that in the narration made by the accused inconsistencies were noticed. According to him further enquiry led to the accused making a confession about his involvement in the offence in question, wherein appellant allegedly killed his wife by kitchen knife causing serious bleeding injuries. He has in his cross examination admitted that the appellant since beginning has come out with story that deceased Meena has self inflicted injury. The medical evidence if appreciated based on the Exhibit 19 postmortem report, which is an admitted piece of evidence, it is to be noticed that the deceased suffered single stab injury on the right side of the chest. She suffered incised wound on the top of little finger. As far as single stab injury is concerned, same was caused on the right side anterior aspect of thoracic wall upto second and fourth intercostal space. As a sequel of above injury, the death appears to have been caused. The doctor has certified the cause of death as shock and haemorrhage due to stab injury to right lung.

23. The weapon i. e. knife which was seized and sent for Chemical Analysis though was having blood stains, however, the chemical analysis report at Exhibit 29 has shown the blood analysis inconclusive.

24. In the aforesaid background, the claim put forth in the prosecution case that the accused has confessed P.W. No. 1-Police Officer of having caused stab injury cannot be accepted for the purpose of achieving conviction, as such conviction is not admissible in law. Hence there is no direct evidence available on record to infer involvement of appellant.

25. As such the evidence of P.W. No. 1 cannot be relied for the purpose of considering case of the prosecution to be proved beyond reasonable doubt.

26. P.W. No. 2, the son of the appellant and the deceased namely Sanket is examined at Exhibit 13. This witness at the time of recording of his evidence was four (04) years old. He was unable to understand meaning of oath. As such oath was not administered to him by the Court.

27. If we appreciate testimony of this witness, he in the examination in chief, he has stated that his mother was attacked by knife during the night time, which he witnessed in the light of the bulb/tube. The said witness has identified the knife Article A which was seized from the spot of incident. However, the said witness has failed to identify the accused person. In response to the question put to him, he has specifically stated that he is narrating the evidence in the Court as was taught to him by his brother. As such evidence of this child witness in the light of principle narrated hereinabove cannot be accepted to be reliable one as he is not deposing in natural way. The evidence of the said witness is not inspiring confidence. There is no independent evidence with whom testimony of this witness can be corroborated and said to be consistent with. As such evidence of this witness is also liable to be rejected.

28. Evidence of P.W. No. 3 speaks of the said witness having noticed the appellant removing Meena from the house in a covered bed-sheet. However, testimony of this witness does not implicate the appellant in the commission of crime in question

particularly when admission of deceased Meena by the Appellant in KEM Hospital is not disputed question of fact, rather it is the case of the appellant that after quarrel with the deceased Meena she has self inflicted weapon.

29. P.W. No. 4-Dr. Girish has performed the postmortem on deceased Meena. In his cross examination he has specifically stated in response to the question put to him by the defence as regards cause of injury. He has in categorical terms stated single stab injury like the one in this case is possible in case patient inflicts on himself by Article No. A/1.

30. The evidence of P.W. No. 5-Mother of the deceased Meena speaks of the appellant illtreating Meena under the influence of liquor. Apart from above her narration is nowhere supported case of the prosecution so as to establish guilt of the accused beyond reasonable doubt.

31. P.W. No. 6-Mr. Bhagwat Banosde, Police Inspector attached to the Kurad Police Station (Malad-E) in his cross examination has stated that he has not recorded statement of the person who had

given message of alleged incident of assault by the appellant, though the said witness has proved the recovery of the muddemal article viz saree, blouse, peti-coat, blood stained knife, green colour lungi of accused, T-shirt of a child, however his evidence is not sufficient to bring home the guilt of the accused so as to infer the involvement of the appellant in the offence in question.

32. Even if the case of the accused is considered based on the circumstantial evidence, still the chain of the events which led to infer guilt of the accused can not be inferred. The stand of the appellant since beginning is that of deceased Meena has self inflicted the stab injury. The chemical analysis of the blood found on the cloths recovered from the accused and deceased, on the weapon, on the floor of the house, etc. remained inconclusive.

33. In the aforesaid background, upon evaluation of the evidence of the witnesses recorded above, what can be noticed is the prosecution has failed to establish the guilt of the accused beyond reasonable doubt. There is absence of sufficient evidence on record to infer involvement of the accused in the offence in question, though the Trial Court has recorded that there is no need

for a person to inflict the injuries. However, the narration of the incident from the beginning by the accused, inclusive evidence about blood stains on the weapon and the seized articles and unreliable evidence of the sole eye witness i. e. child P.W. No. 2 prompt this Court to infer that the conviction ordered by the Court below cannot be sustained.

34. In the aforesaid background, the judgment dated 15th December, 2015 delivered by the learned Additional Sessions Judge, City Civil and Sessions Court, Greater Bombay in Sessions Case No. 878 of 2013 is hereby quashed and set aside as the evidence is not found to be sufficient to sustain the conviction of the accused. As such it is ordered that appellant is acquitted of the charge framed against him for the offence punishable under Section 302 of the Indian Penal Code in Sessions Case No. 878 of 2013.

35. If not required in any other crime, appellant/accused be set free. Appeal stands allowed in above terms.

(R. N. LADDHA, J)

(NITIN W. SAMBRE, J.)