

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO.104 OF 2007**

Gulam Dastagir @ Budda Rahimtulla Shaikh
Aged 21 years, Indian Inhabitant,
Occ : Rickshaw Driver,
Permanent resident of
Chirag Nagar, Kaju Tekdi,
Sudha Seva Society, Ghatkopar (West),
Mumbai 400 086.

..Appellant.

versus

The State of Maharashtra
(At the instance of Ghatkopar
Police Station vide C.R.No.27 of 2006)

..Respondent.

.....
Dr. Yug M. Chaudhary with Ms. Parijata Bhardwaj, Ms. Naima Shaikh
and Mr. Talat Sayed i/b Khan Abdul Wahab for the Appellant.
Smt. V.R. Bhonsale, Addl.P.P. for the State.

.....
**CORAM : SMT V.K. TAHILRAMANI &
A.S. GADKARI, JJ.**

24th August, 2015.

ORAL JUDGMENT (PER SMT V.K. TAHILRAMANI, J.) :

The Appellant - original accused No.1 has preferred this Appeal against the judgment and order dated 20th December, 2006 passed by the learned Adhoc Additional Sessions Judge, Sewree, Mumbai in Sessions Case No.336 of 2006. By the said judgment and order the learned Sessions Judge convicted the Appellant under Section 302 of the Indian Penal Code and sentenced him to imprisonment for life and fine of Rs.5,000/-, in default further rigorous imprisonment for three

months.

2. The prosecution case briefly stated is as under :

It is the prosecution case that on 17th January, 2006 at about 5.45 p.m. the Appellant assaulted Mahesh Chavan with a knife and caused his death. The incident occurred in Ganesh Maidan which is situated at Ghatkopar, Mumbai. The incident was witnessed by P.W.1 – Sachin, P.W.2 – Vinod and P.W.5 – Pratibha. Out of them P.W.1 – Sachin who knew the deceased as well as the Appellant lodged the F.I.R. Thereafter investigation commenced. After completion of investigation charge-sheet came to be filed.

3. Charge came to be framed against the Appellant and two other accused under Section 120B and under Section 302 of the Indian Penal Code. All the accused pleaded not guilty to the said charge and claimed to be tried. Their defence is that of total denial and false implication. After going through the evidence adduced in this case, the learned Sessions Judge acquitted original accused Nos.2 and 3 of all the charges. However, the learned Sessions Judge convicted and sentenced the Appellant as stated in paragraph 1 above, hence, this Appeal.

4. We have heard learned counsel for the Appellant and the learned

APP for the State. We have carefully considered their submissions, the facts and and circumstances of this case, the judgment and order passed by the learned Sessions Judge and evidence in this case. After carefully considering the matter, for the below mentioned reasons, we are of the opinion that there is no merit in the Appeal.

5. In order to support the conviction, the prosecution has placed reliance on the evidence of three eye-witnesses i.e. P.W.1 – Sachin, P.W.2 – Vinod and P.W.5 – Pratibha. P.W.1 – Sachin has stated that he knew deceased Mahesh as he was his Gym partner. On 17th January, 2006 at about 6.45 p.m. when he was returning home, he noticed the Appellant stabbing deceased Mahesh with a knife in front of the house of the deceased which was situated in Laxmibai Chawl. On account of the stab injuries, there was profuse bleeding from the body of Mahesh. On account of the injuries Mahesh collapsed on the ground. He then took Mahesh to Rajawadi Hospital, where the doctor declared that he was dead.

6. P.W.2 – Vinod is the second eye-witness. Vinod has stated that on 17th January, 2006 he had come out of the house to ease himself. When he was returning back, he saw the Appellant assaulting Mahesh with a knife. After the incident, Mahesh was taken to the hospital.

7. P.W.5 – Pratibha is the last eye-witness in this case. She has stated that she was residing at Laxmibai Chawl at Ghatkopar (West), Mumbai along with her family. She has further stated that on 17th January, 2006 at about 5.45 p.m., she was standing on the road adjoining Ganesh Maidan. At that time, she saw the Appellant giving blows with knife to Mahesh Chavan.

8. On going through the evidence of all the three eye-witnesses, we find that nothing has been elicited in the cross-examination of any of these three witnesses so as to disbelieve their testimony. We find their testimony to be wholly truthful, consistent and reliable and hence, we have no hesitation in relying on the same.

9. In addition to the evidence of the three eye-witnesses, the prosecution has also placed reliance on the evidence of P.W.6 – Satish. Satish has stated that on 17th January, 2006 at about 5.45 p.m. when he was returning home, he saw the Appellant running away with a knife. After crossing some distance, Satish saw that Chavan was lying in pool of blood and Sachin (P.W.1) and another boy lifted Mahesh and put him in rickshaw.

10. It was contended by learned counsel for the Appellant that the case would not fall under Section 302 of the Indian Penal Code, but it

would fall under Section 304 Part I of the Indian Penal Code. He submitted that the incident would fall either under Exception 1 or Exception 4 to Section 300 of the Indian Penal Code. Exception 1 deals with an act which occurs on account of grave and sudden provocation and Exception 4 deals with an act which occurs during a sudden quarrel. To support his contention that it is a case of grave and sudden provocation, he has placed reliance on the evidence of P.W.5 – Pratibha who has stated that just before the Appellant stabbed Mahesh Chavan, Mahesh Chavan challenged accused No.1 and asked him to do whatever he wanted to do. Thereafter the Appellant stabbed Mahesh Chavan. In our view, this sentence by the deceased is not of such a nature that it would lead to grave and sudden provocation to the Appellant due to which the Appellant would have stabbed the deceased ten times with a knife. Out of these 10 incised wounds sustained by Mahesh Chavan, six of them were on the left side of the chest. Looking to the facts and circumstances of this case, in our opinion, the instant case would not be covered by Exception 1 i.e. the act which takes place on account of grave and sudden provocation.

11. Thereafter learned counsel for the Appellant again placed reliance on the evidence of P.W. 5 – Pratibha to show that the incident took place during a quarrel. He submitted that in this view of the matter, the case would be covered by Exception 4 to Section 300 i.e.

an act which occurs during a sudden quarrel. He drew our attention to the evidence of P.W.5 – Pratibha wherein she has stated that a scuffle took place between the Appellant and the deceased. A quarrel started between the Appellant and the deceased. Thereafter the Appellant started giving blows with a knife to the deceased. To bring a case within Exception 4 to Section 300 of the Indian Penal Code, all the ingredients mentions in it must be found. For the application of Exception 4 to Section 300 of the Indian Penal Code, it is not sufficient to show that there was a sudden quarrel and there is no premeditation on the part of the accused, but it must further be shown that the accused has not taken any undue advantage or acted in a cruel and unusual manner. The fact that the Appellant assaulted the deceased with a knife ten times on the body and out of these, six blows were given on the left side of the chest of the deceased and the fact that the deceased was unarmed, shows that the Appellant had taken undue advantage of the situation especially of the fact that the deceased was unarmed. It may also be stated that the medical evidence shows that in all the deceased sustained 14 injuries. Out of these 14 injuries, 10 are incised wounds. The rest are abrasions. Out of the 10 incised wounds, 6 are on the left side of the chest. The internal injuries show that injury No.4 perforated pleura as well as heart, injury No.5 perforated pericardium and the lower pole of the heart and injury No.6 caused perforation of the lung. Keeping in view the number and

nature of injuries, it shows that the Appellant did not just have the knowledge that the act would be likely to cause death, but the Appellant intended to cause death of Mahesh. Looking to the facts and circumstances of this case, the nature of the weapon used, the part of the body on which the injuries were inflicted, the force used while assaulting and the nature of the injuries, which injuries as seen from the medical evidence were extensive in nature, we are of the considered opinion that the case would not fall under Exception 1 or Exception 4 to Section 300 of the Indian Penal Code. Hence, we find no merit in the Appeal. The Appeal is dismissed.

(A.S. Gadkari, J.)

(Smt. V.K. Tahilramani, J.)