

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.165 OF 2013
(By Accused against conviction)

Sakina Yusuf Khan @ Sakina Jahir Khan. Aged – 30 years, Residing at S.No.159, Pirachi Patti, Labour Camp, Bhosalenagar, Hadapsar, Pune, (Presently in judicial custody in Yerawada Central Prison, Yerawada, Pune).	]]]]]]]]]]]]]	... Appellant/ (Orig. Accused)
---	---	--

Versus

State of Maharashtra, (At the instance of Hadapsar Road Railway Station,	]]]	... Respondent (Orig.Complainant)
---	-------------	---

Ms. Rohini Dandekar, Advocate (Appointed) for Appellant/Original Accused.
 Smt. G. P. Mulekar, APP for State/Orig. Complainant.

CORAM :- SMT. V. K. TAHILRAMANI AND
SMT. I. K. JAIN, JJ.
DATE :- MARCH 04, 2015

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

1. The Appellant/original accused has preferred this appeal against the Judgment and Order dated 23/05/2012 passed by the learned Additional Sessions Judge, Pune, in Sessions Case No.537 of 2011. By the said Judgment and Order, the learned Sessions Judge convicted the Appellant

under Section 302 of Indian Penal Code and sentenced her to suffer R.I. for life and to pay a fine of Rs.1,000; in default R.I. for six months.

2. The prosecution case briefly stated is as under :

The Appellant was the wife of cousin brother of the deceased. The deceased in the present case is Mohsin Ayub Shaikh @ Wasim Khan. Though the Appellant was married to the cousin brother of the deceased, since about 2 years prior to the incident, she was residing with the deceased Mohsin @ Wasim in Pune. The Appellant and the deceased were residing like husband and wife. Since one month prior to the incident, the Appellant and the deceased were residing in a tin shed in labour camp situated at Magarpatta in Pune. They were residing in the labour camp of PW 3 Milind. PW 6 Wahida was the neighbour of the Appellant and the deceased. PW 3 Milind and PW 6 Wahida thought that the Appellant and the deceased were husband and wife. There used to be frequent quarrels between the Appellant and the deceased.

The incident took place in the night between 07/10/2010 and 08/10/2010. On 07/10/2010 at about 9.30 p.m., a big quarrel took place between the Appellant and the deceased. PW 6 Wahida who was the neighbour of the Appellant and the deceased, went to pacify the quarrel, however, both the Appellant and the deceased did not pay any heed to her and continued to quarrel. On 08/10/2010 in the morning, Mohsin did not report for duty. At about 9.00 a.m., PW 3 Milind was informed by one neighbour that somebody was sleeping in the house of Mohsin and bloodstains were present near the person and the woman residing with the said person was absent. PW 3 Milind then went to the hut and he noticed that the person lying under the blanket was not making any movement, hence information was given to Hadapsar Police Station. Police came to the spot. They removed the blanket from the body and found that the body was that of Mohsin. Blood was oozing from the right ear and nose of Mohsin. His penis was cut off and lying near the body. PW 1 Abdul Kazi was the contractor with whom deceased Mohsin @ Wasim was

working. He was informed that in the house of Mohsin, one person was lying, hence he went to the house of Mohsin. He saw crowd had gathered in front of the house of Mohsin, including the landlord PW 3 Milind. They noticed injury to the head of Mohsin and brain had come out from the skull and it was lying on the quilt. His penis was cut off and lying near the body. They also noticed one knife and one stone lying in the room. PW 1 Abdul then lodged F.I.R. (Exh.22). Thereafter investigation commenced. The dead body of Mohsin @ Wasim was sent for post-mortem. In the meanwhile, the Appellant surrendered at the police station in Jalgaon. Jalgaon police gave information to Hadapsar Police Station, Pune. Then PW 8 PSI Chavan was deputed to go to Jalgaon and bring the Appellant to Pune. Accordingly, he went to Jalgaon and brought the Appellant to Pune after obtaining transit remand from J.M.F.C., Jalgaon. After bringing Appellant to Pune, she was produced before the J.M.F.C. Pune. During the course of investigation, bloodstained clothes of the Appellant came to be recovered at her instance. After completion of investigation, charge-sheet came to be filed.

3. Charge came to be framed against the Appellant/accused under Section 302 of IPC. The accused pleaded not guilty to the said charge and claimed to be tried. Her defence is that of total denial and false implication. After going through the evidence adduced in this case, the learned Additional Sessions Judge convicted and sentenced the Appellant as stated in para 1 above, hence, this appeal.

4. We have heard the learned Advocate for the Appellant and the learned APP for the State. We have carefully considered their submissions, the Judgment and Order passed by the learned Additional Sessions Judge and the evidence in this case. After carefully considering the same, for the below-mentioned reasons, we are of the opinion that the Appellant committed murder of Mohsin @ Wasim Khan.

5. There is no eye witness in the present case and the case is entirely dependent on circumstantial evidence. In a case depending just on circumstantial evidence, motive

assumes great significance. In the present case, the motive for the Appellant to commit the crime has been brought on record through the evidence of PW 3 Milind, PW 6 Wahida and PW 7 Jayashree. PW 3 Milind has stated that deceased Mohsin was working as a mason with Kazi Contractor at Hadapsar. He has further stated that the deceased, along with his wife, was residing in his labour camp situated at Magarpatta, Pune, since about one month prior to his death. PW 3 Milind has identified the Appellant as the wife of deceased Mohsin. PW 3 Milind has further stated that quarrel used to take place between the deceased and the Appellant. On the night between 07/10/2010 and 08/10/2010, a quarrel was going on between the Appellant and the deceased. One neighbour from his labour camp informed him about the said quarrel, hence he went to the labour camp. At that time, the quarrel was over, hence he instructed the Appellant and the deceased not to pick up quarrel again. On the next day in the morning, the dead body of Mohsin was found lying in his house with injuries on his person.

6. The second witness who has deposed about motive is PW 6 Wahida. Wahida has stated that she was the neighbour of the Appellant and the deceased. She has stated that the Appellant was residing with her husband Mohsin. Wahida has stated that the Appellant and the deceased used to quarrel every alternate day. On the night prior to the incident, at about 9.30 p.m., a big quarrel took place between the Appellant and the deceased. PW 6 Wahida went to the house of the Appellant and the deceased to pacify the quarrel, however, the Appellant and the deceased did not pay any heed to her and continued to quarrel. Therefore, Wahida informed about the incident to their landlord i.e. PW 3 Milind. Then Milind came to the spot at about 10.45 p.m. Milind instructed the Appellant and the deceased not to quarrel. Thereafter, Wahida went to her hut and slept. In the morning, she was informed that the murder of Mohsin had taken place.

7. The last witness on the point of motive is PW 7 Jayashree. Jayashree has stated that she knew the Appellant

as she was residing on the backside of her hut since about a fortnight. Jayashree has stated that the Appellant was residing with one man just like his wife. Jayashree has further stated that about 8 days prior to the incident, she had gone to the house of the Appellant. At that time, the Appellant had picked up a quarrel with Mohsin. Thus, the evidence of PW 3 Milind, PW 6 Wahida and PW 7 Jayashree shows that the relations between the Appellant and the deceased were not cordial, hence the Appellant had the motive to commit murder of Mohsin.

8. It has come on record through the evidence of PW 2 Shaikh Siraj who was the father of the deceased that the Appellant, in fact, was not the wife of Mohsin @ Wasim but, in fact, she was the wife of the cousin of the deceased. Despite this fact, the Appellant was residing with the deceased since about 2 years prior to the incident. PW 2 Siraj has stated that the Appellant had enticed his son Mohsin @ Wasim to leave his native place and to come and reside with her in Pune. He was informed about the death of his son. He then

came to Pune and identified the dead body as that of his son Mohsin.

9. The evidence of PW 3 Milind, PW 6 Wahida and PW 7 Jayashree shows that the Appellant and the deceased were the only persons residing in the tin shed at Magarpatta in Pune. PW 3 Milind has stated that Mohsin was working as a mason with Kazi Contractor at Hadapsar in Pune. At that time, the deceased was residing in his labour camp situated in Hadapsar, Pune. The labour camp consisted of tin sheet sheds. The deceased was residing in the said camp since about one month prior to his death. He was residing there with his wife. PW 3 Milind has identified the Appellant as the wife of the deceased. PW 6 Wahida has stated that she was the neighbour of the Appellant and the deceased. She has stated that the Appellant was residing with the deceased. PW 7 Jayashree has stated that she knew the Appellant as the Appellant was residing at the backside of her hut. Jayashree has stated that the Appellant was residing with one man just like his wife. Thus, the evidence of PW 3 Milind, PW 6 Wahida

and PW 7 Jayashree taken together shows that the Appellant and the deceased were residing as husband and wife in the tin shed. The evidence of PW 3 Milind and PW 6 Wahida shows that the night prior to the incident, a big quarrel took place between the Appellant and the deceased. PW 6 Wahida went to pacify the quarrel, however, the Appellant and the deceased did not pay any heed to her and they continued to quarrel, hence Wahida informed their landlord PW 3 Milind. PW 3 Milind has stated that one of the neighbourers informed him that quarrel was going on between the Appellant and the deceased, hence he went to the hut of the deceased. At that time, the quarrel was over, hence he instructed the Appellant and the deceased not to quarrel again. It is pertinent to note that the very next morning, the dead body of Mohsin @ Wasim was found lying in the tin shed with an injury on the head due to which the brain had come out and his penis was also found to be cut off and lying near the dead body. Looking to the fact that the evidence on record shows that the Appellant and the deceased were the only two persons in the hut on the

previous night and in the morning the dead body of Mohsin @ Wasim was found with injuries on his person, Section 106 of the Evidence Act would come into play.

10. The evidence on record shows that the Appellant and the deceased were in the house at the time of the incident. In such case, the accused has to explain how the deceased sustained injuries and died. In this connection, we may refer to Section 106 of the Evidence Act. Section 106 of the Evidence Act provides that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. In several recent decisions, the Supreme Court has held that the principle which underlies Section 106 of the Evidence Act can be applied in such cases. In the case of ***State of Rajasthan Vs. Kashi Ram***¹, the Supreme Court has observed that if the accused fails to offer an explanation on the basis of facts within his special knowledge, he fails to discharge the burden cast upon him by Section 106 of the Evidence Act. In a case resting on circumstantial evidence, if the accused fails to offer a

¹ (2006)12 SCC 254 : AIR 2007 SC 144

reasonable explanation in discharge of the burden placed on him, that itself provides an additional link in the chain of circumstances proved against him. Section 106 does not shift the burden of proof in a criminal trial, which is always upon the prosecution. It lays down the rule that when the accused does not throw any light upon facts which are specially within his knowledge and which could not support any theory or hypothesis compatible with his innocence, the Court can consider his failure to adduce any explanation as an additional link which completes the chain. It is pertinent to note that the Appellant has not furnished any plausible explanation regarding the injuries sustained by Mohsin @ Wasim and his death.

11. It is the prosecution case that the Appellant assaulted the deceased on the head with a stone and also cut off his penis with a knife. This is borne out by the medical evidence. PW 11 Dr.Avishek Kumar has deposed about post-mortem of Mohsin @ Wasim. He has stated that on external examination, following injuries were found on the

dead body of Mohsin @ Wasim.

- i) Irregular lacerated wound measuring 4 x 4 cm over right temporal region of scalp with contused and irregular margins.
- ii) Amputation of shaft of the penis. margins were clear-cut.

On internal examination, the following injuries were seen.

- i) Skull – Injury as mentioned in Injury No.1.
Defused subscalp haematoma over right temporal region was found. On skull, multiple fractures of right temporal bone extending to the base of middle cranial fossa, extending across cella turcica to left of midline, with haematoma formation.
- ii) Brain – There was defused subdural and subarachnoid haematoma over left parieto temporal lobe of approximate 80 ml. Brain was oedematous. Cut section reveals haematoma of right temporo parietal region.
- iii) Abdomen – Injury as described in Injury No.2.

According to the medical evidence, cause of death was due to Coma as a result of head injury produced by blunt force trauma, which was sufficient to cause death in ordinary course of nature. All injuries were ante-mortem in nature and recent in origin. Dr. Kumar has stated that even if immediate medical treatment would have been provided to the deceased, considering injuries sustained on his head and penis, he could not have survived.

12. The prosecution is also relying on the evidence of PW 4 Raees to prove the circumstance of extra judicial confession. PW 4 Raees has stated that the brother of the Appellant was his friend, hence he knew the Appellant. The deceased Mohsin had worked on his site as a mason for about 2.½ months. On 08/10/2010 at about 7.00 a.m., the Appellant came to his residence. She informed him that she had a quarrel with Mohsin and she wanted to go back to her native place. Hence she asked for some cash amount from Raees. One Rashid Baksh who was with Raees that time, paid the Appellant Rs.350/-. Then Raees along with Rashid

Baksh and the Appellant went to Shivajinagar S.T. Stand at Pune to leave the Appellant. The Appellant then sat in the bus. When the bus was about to move, the Appellant informed Raees that she has killed Mohsin. The evidence of PW 8 PSI Chavan who was the PSI at Hadapsar Police Station shows that on 08/10/2010, a message was received from MIDC Police Station in Jalgaon that the Appellant in the present crime had surrendered in their police station. PSI Chavan was then given instructions to bring the accused to Hadapsar Police Station, Pune. Hence on 09/10/2010, PSI Chavan, along with lady police constable Mahajan, went to Jalgaon. They went to MIDC Police Station in Jalgaon. The Appellant was handed over into their custody. They obtained transit remand of the Appellant from J.M.F.C., Jalgaon. Then the Appellant was brought to Pune. The Appellant was then produced before the J.M.F.C. at Pune. Thus, the evidence of PW 4 Raees shows that the Appellant made an extra judicial confession to PW 4 Raees. There was no reason for the Appellant to go to the Police Station at Jalgaon and surrender if she had not committed the crime. The evidence of PSI

Chavan shows the conduct of the Appellant which can certainly be taken into consideration.

13. In addition to the above evidence, the prosecution is relying on circumstance of recovery of bloodstained clothes at the instance of Appellant. PW 10 Sanjay has deposed about this aspect. Sanjay has stated that on 12/10/2010, he was called to Hadapsar Police Station. At that time, the Appellant made a statement about discovery of her bloodstained clothes. Her statement was taken down in writing. Thereafter the Appellant led the police and panchas to Magarpatta area in Hadapsar. The Appellant took them behind one temple where there was nulla. Besides that nulla, there was a dilapidated room. From the said dilapidated room, the Appellant took out one Salwar and Kurta of blue colour. They were old clothes and were stained with blood. The C.A. report (Exh.48) shows that the Salwar and Kurta were stained with blood of 'B' group. The clothes of the deceased as per C.A. report (Exh.48) were stained with blood of 'B' group. This shows that the blood group of deceased

was 'B'. C.A. report Exh.50 shows that the blood group of the Appellant was 'O'. Thus, finding of blood of 'B' group on the clothes of the Appellant which is the same group which was found on the clothes of the deceased, is a highly incriminating circumstance. It may be noted that the Appellant has not furnished any explanation for finding of blood of 'B' group on her clothes.

14. On going through the record, we are of the opinion that there is sufficient evidence to prove beyond reasonable doubt that Appellant committed murder of Mohsin @ Wasim. Thus, we find no merit in the Appeal. Appeal is dismissed.

15. This order be communicated to the Appellant who is in jail.

16. We quantify legal fees to be paid by the High Court Legal Services Committee to the appointed Advocate Ms. Rohini Dandekar at Rs.5,000/-.

(SMT. I. K. JAIN, J.)

(SMT. V. K. TAHILRAMANI, J)