

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO.187 OF 2014**

Rauf @ Lalu Khwaja Qureshi
Aged about 39 years,
at present undergoing a
sentence of life imprisonment
at Kolhapur Central Prison,
as convict prisoner No.C-5183

...Appellant.

versus

The State of Maharashtra

..Respondent.

.....
Ms. Rohini M. Dandekar, advocate appointed for the Appellant.
Ms. R.M. Gadhvi, Addl.P.P. for the State.

.....
**CORAM : SMT V.K. TAHILRAMANI, Acting C.J.&
A.S. GADKARI, J.**

5th October, 2015.

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

The Appellant - original accused has preferred this Appeal against the judgment and order dated 14th October, 2011 passed by the learned Additional Sessions Judge, Greater Bombay in Sessions Case No.457 of 2009. By the said judgment and order the learned Sessions Judge convicted the Appellant under Sections 302 and 309 of the Indian Penal Code. For the offence punishable under Section 302 of the Indian Penal Code, the Appellant was sentenced to suffer imprisonment for life and for the offence punishable under Section 309 of the Indian Penal Code, the Appellant was sentenced to suffer imprisonment for

two months. The learned Sessions Judge directed that both the substantive sentences of imprisonment shall run concurrently.

2. The prosecution case briefly stated is as under :

Deceased Parveen was the wife of the Appellant. The Appellant and Parveen had four children i.e. Akib, Askan, Aman (P.W.9) and Muskan. The Appellant along with his wife Parveen and four children were residing in Room No.305 in Bharat Nagar at Bandra (East), Mumbai. The Appellant was working as a wireman and his wife Parveen used to do housework. Aman was studying in the 3rd standard at the time of the incident. The school timing was from 12 p.m. to 5 p.m. On the day of the incident at about 11.30 a.m. Aman went out to play with his sister Muskan. At that time the Appellant and his wife Parveen were at home. Aman came back home with his sister after half an hour and he found the door of the house was closed. As the school timing was from 12.00 p.m to 5.00 p.m., Aman knocked on the door, but the door was not opened. Aman then knocked loudly on the door. P.W.4 – Kanija who was residing upstairs on the mezzanine floor came down. She also knocked on the door. At that time Aman through the gap in the door saw that his father (Appellant) had kept one hand on the mouth of his mother and in the other hand the Appellant was holding a knife. Aman

shouted loudly. Thereupon people gathered. The Appellant then opened the door and came out. The Appellant then caused injury to himself on the stomach with a knife. He threw the knife in the house and tried to run away. P.W.4 - Kanija lodged First Information \Report. Thereafter investigation commenced. The dead body of Parveen was sent for postmortem. P.W.7 - Dr. Savardekar performed the postmortem on the dead body of Parveen. Dr. Savardekar found in all 20 injuries on the body of Parveen. Most of them were stab wounds on various parts of the body including the chest. On completion of investigation, charge-sheet came to be filed.

3. Charge came to be framed against the Appellant under Sections 302 and 309 of the Indian Penal Code. The Appellant pleaded not guilty to the said charge and claimed to be tried. The defence of the Appellant is that of total denial and false implication. After going through the evidence adduced in this case, 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 the evidence on record. After carefully considering the matter, for the below mentioned reasons, we are of the opinion that the Appellant assaulted his wife Parveen with a knife and caused her death.

5. The star witness in the present case is P.W.9 – Aman. Aman was the son of the Appellant and the deceased. Aman was about nine years of age at the time of the incident. Aman has stated that the Appellant is his father and deceased Parveen was his mother. Aman had two brothers and one sister. His brothers names were Akib and Askan and his sister's name was Muskan. They were all going to school. Aman's school timing was from 12.00 to 5.00 p.m. Aman has stated that his father was working as a wireman and his mother used to do household work. Aman has stated that his father killed his mother on 26th February, 2009. On that day at about 11.30 a.m. Aman and his sister Muskan had gone out to play. They returned back after half an hour. They found that the door of the house was closed. As their school timing was from 12 p.m. to 5 p.m. Aman knocked on the door, but the door was not opened. Therefore, he knocked loudly on the door. At that time the lady staying upstairs(PW4 Kaniya) came down. She also knocked on the door. At that time Aman saw from the gap between the

door that his mother had fallen down and his father had kept one hand on the mouth of his mother. In the other hand his father was holding a knife. Aman shouted loudly. Thereupon some people gathered there. His father then opened the door and came out. His father then caused injury to himself on the stomach. His father then threw the knife and tried to run.

6. P.W.4 – Kanija was the neighbour of the Appellant and the deceased. She has stated that she was residing in Room No.305 at Bharat Nagar, Bandra (East). She was residing on the mezzanine floor of Room No.305 and on the ground floor of the room the Appellant along with his four children and wife were residing. Kanija has stated that on 26th February, 2009 she was in her room on the mezzanine floor. Two boys of the Appellant had gone to school. One son and the daughter of the Appellant came and saw that the door of the room of the Appellant was closed. The son and daughter started shouting and knocking on the door of their house. Kanija then came down from the mezzanine floor and asked them why they were shouting. Both the children told her that their mother is not opening the door. The Appellant who was inside the house then opened the door. The Appellant had blood on his person. The Appellant was holding knife in his hand. The Appellant assaulted himself with

the said knife. Then he threw the knife and ran away. When Kanija looked inside the room she saw that the wife of the Appellant was lying in a pool of blood. Kanija then lodged the First Information Report.

7. Thus the evidence of Aman shows that at 11.30 a.m. when he went out of the house with his sister Muskan to play, his parents i.e. the Appellant and his wife were in the house. After half an hour when Aman came back home, he saw that the door of his house was closed from inside. When he looked through the gap in the door, he saw that his father had kept one hand on the mouth of his mother and in the other hand, the Appellant was holding a knife. The sequence of events as seen from the evidence of P.W.9 – Aman shows that it was the Appellant who assaulted his wife Parveen with a knife and the sequence of event excludes the possibility of any other person entering into the house and causing the death of Parveen.

8. In addition to the evidence of Aman, the prosecution is relying on the evidence of P.W.6 – Shakir who is a panch witness. Shakir has stated about the bloodstained clothes of the Appellant being seized. These clothes were sent to the Chemical Analyser. The C.A. report (Exhibit 51) shows that the clothes of the

Appellant were stained with blood of 'B' group. The clothes of the deceased were also sent for chemical analysis. The C.A. report (Exhibit 51) shows that salwar and kurta of Parveen was stained with blood of 'B' group. From this it can safely be said that the blood group of Parveen was 'B'. This finding of blood of 'B' group on the clothes of the Appellant is a strong incriminating circumstance against him. The Appellant has not furnished any explanation for the presence of blood of 'B' group on his clothes.

9. The defence taken by the Appellant is that some person had entered into his house and assaulted his wife Parveen and also assaulted him. However, the evidence of Aman shows that when he left the house, his parents i.e. the Appellant and Parveen were in the house. Aman has clearly stated that when he came home the door of the house was closed from inside. The evidence of P.W.4 - Kanija shows that there was only one exit door to the room of the Appellant. The said door as seen from the evidence of P.W.9 - Aman and P.W.4 - Kanija was closed from inside. Had some person entered into the house of the Appellant and assaulted his wife Parveen, then in such case the Appellant would have rushed his wife to the hospital and would not have latched the door of the house from inside. Thus, we find that the defence raised by the Appellant is palpably false. Giving of false

explanation furnishes one more link in the chain of circumstances against the Appellant.

10. It is the prosecution case that the Appellant assaulted his wife Parveen with a knife and caused her death. This is supported by the medical evidence. P.W.7 - Dr. Savardekar who conducted the postmortem on the dead body of Parveen on external examination found 20 injuries which are stated below :

- "1) 2 x 5 cm. stab wound on the right side of the umbilicus into sub-cutaneous deep.
- 2) 2 x 1 cm. stab wound with gapping 6 to 7 cms. below the left breast within anterior axillary line X sub-cutaneous deep.
- 3) 3 x 1.5 cm. stab wound over the left breast about 1.5 cm. above the areola x cavity deep.
- 4) 1.5 x .5 cm. stab wound on left breast medially in the line of the nipple.
- 5) 3.5 x 1.5 x sub-cutaneous deep stab wound on the right side of the neck.
- 6) 6 x 5 x sub-cutaneous deep on over the left upper arm posteriorly slashed skin tag was present.
- 7) 2.5 cm x 1.5 cm. x sub-cutaneous deep posteriorly left side 2 cm deep over back.
- 8) 3 cm x 1.5 cm. x 2 cm vertically elliptical 2.5 cm. left to spinal column at level of T2.
- 9) 5 cm. x 2.5 cm. into cavity deep over the right side of the back, 4.5 cm right to spinal column at level of T2.
- 10) 4.5 cm x 1 cm x spinal deep 16 cm below the nape of

neck, vertically placed.

11) 4.5 cm x 1.5 cm x cavity deep over the back, 3.5 cm to the left side of spinal column at the level of T12.

12) 4 cm x 2 cm x 3 cm over the back right side 9 cm from spinal column.

13) 6 x 2.5 cm x 3 cm obliquely placed over the right side of the back, 9 cm from the spinal column at the level of L-1.

14) 2.5 x 1 cm x sub-cutaneous deep over the posterior superior iliac spine.

15) 4 x 2.5 cm x cavity deep below scapula ® at level of T-7.

16) 2.5 cm x 1 cm x sub-cutaneous deep over left side lower border of mandible.

17) 2.5 x 1 cm x sub-cutaneous deep left side over angle of mandible.

18) 3 cm x .5 cm x sub-cutaneous deep in left side 4 cm below angle of mandible.

19) Stab injury over the right forearm, 5 cm x 2 cm x sub-cutaneous deep over lateral side.

20) 5 cm x 2 cm x cavity deep obliquely and elliptical place present in the mid clavicular line on the right side of the chest along the lower border of thoracic cage.”

11. According to the medical evidence most of the injuries are stab wounds and majority of blood injuries were found on the neck, chest and abdomen.

12. The Appellant has also been convicted under Section 309 of the Indian Penal Code. The evidence of P.W.9 – Aman shows that the door of his house was closed from inside. When he peeped

through the door, he saw that his father had kept one hand on the mouth of his mother and in the other hand his father was holding a knife. Aman shouted loudly, whereupon some people gathered. His father then opened the door of the house and came out. Then his father caused injury to himself on the stomach and threw the knife. The evidence of P.W.4 – Kaniya also shows that the Appellant came outside the house and assaulted himself with a knife and threw the knife. In addition, the prosecution has relied on the evidence of P.W.8 – Dr. Jyoti Mehta. Dr. Jyoti Mehta has stated that when the Appellant was brought to the hospital, history was given of self inflicted stab injury by knife on the abdomen at around 12 p.m. at home. On examination she found two stab injuries on the abdomen and linear abrasion on abdomen. Dr. Jyoti Mehta has opined that the injuries as seen by her on the Appellant can be caused by any sharp weapon and they will be possible by knife (Article A).

13. On going through the record, we are of the opinion that there is sufficient evidence to prove beyond reasonable doubt that the Appellant committed murder of his wife Parveen by stabbing her with a knife. Thus, we find no merit in the Appeal. The Appeal is dismissed.

Office to communicate this order to the Appellant who is in jail.

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

(A.S. GADKARI, J.)

(ACTING CHIEF JUSTICE)

CERTIFICATE

**Certified to be true and correct copy of the
original signed Judgment.**