

Anand

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

**CRIMINAL APPEAL NO.374 OF 2006
(Against conviction)**

- | | | |
|----|-----------------------------------|-------------|
| 1. | Karan Rambahadur Shah |]Appellants |
| | Hindu, Indian Inhabitant, |](Original |
| | Age:36 yrs, Occu:Gurkha |] Accused) |
| | Having address at Mona |] |
| | Apartments, Versova, |] |
| | Mumbai. |] |
| | |] |
| 2. | Rambahadur Dipbahadur Shah |] |
| | Hindu, Indian Inhabitant, |] |
| | Age:27 yrs, Occu:Gurkha |] |
| | Having address at Mayur Bldg. |] |
| | Reclamation Road, Bandra(W) |] |
| | Mumbai – 400 050. |] |

V/s.

The State of Maharashtra	]Respondent
(At the instance of Versova	]
Police Station, Mumbai)	]

Dr.Yug Mohit Chaudhary, Advocate, for the
Appellants

Mrs A.S.Pai, APP, for the Respondent/State

**CORAM : SMT.V.K.TAHILRAMANI AND
SMT.I.K.JAIN, JJ.**

DATE : 30TH JANUARY, 2015

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

. The appellants/original accused Nos. 1 and 2 have preferred this Appeal against the Judgment and Order dated 16.01.2006 passed by the learned 6th Ad-hoc Additional Sessions Judge, Sewree, Mumbai in Sessions Case No. 288 of 2005. By the said Judgment and Order, the learned Additional Sessions Judge convicted the appellants under Section 302 read with 34 of the Indian Penal Code and sentenced both of them to imprisonment for life.

2. The prosecution case briefly stated is as under :-

Deceased Ramsingh was the brother of PW-1 Kalusingh. Deceased Ramsingh was working as a watchman at Kohinoor Apartment situated at Yari Road, Versova, Andheri. He was also residing in the said building. The appellants

were also working as watchmen. Appellant No.1 Karan was working as a watchman in Mohan Apartment, Versova, Andheri where PW-4 Gorakh Saha was also working as a watchman. Appellant No.2 Rambahadur was also working as a watchman, however, he was working as a watchman at Vashi. Appellant No.1 Karan was residing in Versova, Andheri and appellant No.2 Rambahadur was residing at Bandra Reclamation at the time of the incident. At the relevant time PW-9 Rameshlal was working as a watchman in J & K building situated at Versova, Andheri. J & K building was situated opposite Kohinoor Apartment where deceased Ramsingh was working as a watchman. Both the appellants, PW-9 Rameshlal and the deceased hailed from Nepal, hence, they were known to each other.

The incident occurred on 04.01.2005 at about 06:30 p.m.. At that time PW-9 Rameshlal who was working as a watchman in J & K building was standing at the gate of the building. He heard noise from Kohinoor Apartment which was situated opposite J & K building. Hence, he looked towards Kohinoor Apartment. He saw appellant No.1 Karan and appellant No.2 Rambahadur assaulting Ramsingh near the water tank of Kohinoor Apartment. Both the appellants were assaulting Ramsingh with knives. Rameshlal went towards the appellant to catch hold of them, however, the appellants threw away the knives and ran away. PW-9 Rameshlal and others followed the accused. PW-9 Rameshlal and his colleague Shifayat Khan caught hold of appellant No.2 Rambahadur. They brought the appellant Rambahadur to Kohinoor Apartment. They tied Rambahadur to a tree. Thereafter, they

informed the police on telephone. Police arrived at the spot within fifteen to twenty minutes and took appellant No.2 Rambahadur in their custody. Within a short time, appellant No.1 Karan was also apprehended. PW-9 Rameshlal lodged FIR (Exh.29). Thereafter, investigation commenced. It was found that Ramsingh had died on the spot. The dead body of Ramsingh had sent for post mortem. 21 injuries were found on the dead body of Ramsingh. 18 injuries were incised stab wounds and 3 injuries were incised wounds. A large number of injuries were on the chest. After completion of investigation, charge sheet came to be filed.

3. Charge came to be framed against the appellants under Section 302 read with 34 of the Indian Penal Code. The appellants 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 convicted and sentenced the appellants as stated in para 1 above, hence, this Appeal.

4. We have heard learned Advocate for the appellants and the learned APP for the State. We have carefully considered their submissions, facts and circumstances of this case, the Judgment and Order passed by the learned Sessions Judge and the evidence in this case. After carefully considering the same, for the below mentioned reasons we are of the opinion that both the appellants assaulted Ramsingh with knives and caused his death.

5. The conviction of the appellants is mainly based on the ocular testimony of

PW-9 Rameshlal. PW-9 Rameshlal was working as a watchman in J & K building situated at Versova, Andheri. Deceased Ramsingh was working as a watchman in Kohinoor Apartment at Versova, Andheri. Both these buildings were situated opposite each other. Rameshlal has stated that he knew both the appellants as they were also from Nepal which was his native place. Appellant No.1 Karan was working as a watchman in Mohan Apartment at Versova, Andheri. Appellant No.2 Rambahadur was working as a watchman in Vashi. Appellant Karan was residing in Versova, Andheri and appellant No.2 Rambahadur was residing at Bandra Reclamation at the relevant time. Rameshlal has stated that on 04.01.2005 at 06:30 p.m., he, Shifayat Khan and one Mustaq were at the gate of their building i.e. J & K building. They heard noise from Kohinoor Apartment. Therefore, they looked towards Kohinoor

Apartment. They saw both the appellants assaulting deceased Ramsingh near water tank of Kohinoor Apartment. Both the appellants were assaulting Ramsingh with knives. He went towards them and tried to catch hold of them but the appellants threw away their knives and ran away. Rameshlal along with others followed the appellants. He and his colleague Shifayat Khan caught hold of appellant No.2 Rambahadur and they brought him back to Kohinoor Apartment and tied him to a tree. Thereafter, the police were informed on telephone. Police reached the spot within fifteen to twenty minutes and took appellant No.2 Rambahadur in their custody. Rameshlal told the police that appellant No.1 Karan was working as a watchman in Mohan Apartment. Thereafter, the other watchman PW-4 Gorakh and police brought appellant No.1 to Kohinoor Apartment. Rameshlal then lodged FIR. There is no enmity

of Rameshlal with any of the appellants, hence, there was no reason for Rameshlal to give any false evidence against the appellants. Nothing has been elicited in the cross-examination of Rameshlal so as to cause us to disbelieve his testimony. We find his testimony inspires confidence, hence, we have no hesitation in relying on the same.

6. Learned Advocate for the appellants submitted that the evidence of PW-9 Rameshlal cannot be relied upon because the evidence of Rameshlal shows that on 04.01.2005 at about 06:30 p.m. he along with PW-6 Mustaq was standing at the gate of the building. Dr. Chaudhary submitted that if both the persons were standing near the gate of the building, both of them ought to have witnessed the incident. However, only PW-9 Rameshlal stated that he has witnessed the incident and PW-6

Mustaq does not say that he has witnessed the incident. The evidence of Mustaq shows that he heard some shouts at 06:15 p.m. and he saw two persons running from Kohinoor Apartment. Watchman PW-9 Rameshlal as well as Shifayat Khan chased the two persons and succeeded in catching hold of one person i.e. appellant No.2 Rambahadur. Mustaq saw that many persons had gathered at Kohinoor Apartment and he saw watchman lying in a pool of blood. PW-2 Dr.Ali who was residing in Kohinoor Apartment also came there and he declared that the watchman was dead. The police arrived within fifteen to twenty minutes. Meanwhile, the appellant No.2 Rambahadur was tied by the public in the Apartment. Within a short time, appellant No.1 was brought by the police. No doubt both Mustaq and Rameshlal were standing near the gate of the building but it depends on the power of observation of each person as to what

he observes. It also depends on the reflexes of the person as to how soon he can catch what is going on. PW-9 Rameshlal was a watchman and he was trained to be observant. It was also his job to be observant and to suddenly rush, if there is any emergency. Mustaq, on the other hand, was not a watchman but he was the Chairman of the Society. By the time Mustaq realized what was going on. The appellants had finished assaulting Ramsingh and he saw them running away. Thus even though Mustaq has not seen the actual assault in our opinion, it does not raise doubt about testimony of Rameshlal.

7. PW-6 Mustaq Merchant has stated that when he heard shouts, he saw two persons running from Kohinoor Apartment. He has identified the appellants as the two persons he had seen running away from Kohinoor

Apartment. The fact that the appellants ran away from the scene of crime further establishes their mens rea.

8. Thereafter, Dr.Chaudhary argued that it was not possible for PW-9 Rameshlal to have witnessed the incident for two reasons. The first reason was that the incident occurred near the pump room of Kohinoor Apartment. He pointed out that PW-9 Rameshlal has stated that the pump house of Kohinoor Apartment was situated at the back side of Kohinoor Apartment. Dr. Chaudhary submitted that in such case, it would not have been possible for PW-9 Rameshlal who was standing at the gate of J & K building to witness what was going on behind Kohinoor Apartment. However, on careful perusal of evidence of PW-9 Rameshlal, we find that Rameshlal has stated that the incident of assault took place near the water tank of

Kohinoor Apartment and not near the pump room. In such case, it was very much possible for Rameshlal to have witnessed the incident.

9. Thereafter, Dr. Chaudhary drew our attention to the evidence of PW-10 PSI Sawant wherein he has stated that one building was under construction in the compound of J & K building on 04.01.2005. Sheets of twenty to twenty five feet were affixed on the road side compound of J & K building. Dr. Chaudhary submitted that in view of the fact that sheets were affixed to J & K building, it would not have been possible for PW-9 Rameshlal to have witnessed the incident. As far as this aspect is concerned, it is seen that the sheets would be affixed only to the part where the building was under construction and not to the entire J & K building. In any event, the evidence of PW-9 Rameshlal shows that he was standing at

the gate of the building. No sheet would obviously be affixed on the gate otherwise people and vehicles would not be able to enter or exit the building. Thus, looking to the location where PW-9 Rameshlal was standing, we find that it was very much possible for him to witness the incident.

10. It is the prosecution case that the appellants assaulted Ramsingh with knives and caused his death. This is borne out by the medical evidence. PW-5 Dr.Tasgaonkar conducted the post mortem on the dead body of Ramsingh. On external examination, he found the following injuries.

(i) Incised stab wound over right side of chest anteriorly 11 cm below medial end of right clavicle, 1 and $\frac{1}{2}$ cm lateral to midline, oblique size 2 cm x $\frac{1}{2}$ cm x ? deep with one angle acute.

(ii) Incised stab wound 2 cm beneath and parallel to injury No.1 size 2 cm x $\frac{1}{2}$ cm ? Deep with one angle acute.

(iii) Incised stab wound over right side chest anteriorly 5 cm lateral to midline 4 cm obliquely below right nipple, oblique size 4 cm x 2 cm with fracture right fourth and fifth rib x ? deep with one angle acute.

(iv) Incised stab wound over right side costal margin 19 cm x lateral to midline and 19 cm obliquely below right nipple size 6 cm x 3 cm with fracture rib costal region with one angle acute.

(v) Incised stab wound over left side of chest 19 cm below medial end of left clavicle 2 cm lateral to midline, oblique size 3 cm x 1 cm with tailing at lower end of the wound length 2 cm x fracture six rib seen, one angle acute.

(vi) Incised stab wound on left side chest lateral aspect in anterior axillary line 5 cm and lateral to left nipple, oblique size 2 cm x $\frac{1}{2}$ cm x ? deep.

(vii) Incised stab wound on left side of abdomen upper $\frac{1}{3}^{\text{rd}}$ region 13 cm below left nipple, 4 cm lateral to midline oblique size 2 cm x $\frac{1}{2}$ cm with one angle acute.

(viii) Incised stab wound over left side of abdomen lateral region over left iliac crest 18 cm away from midline, 1 cm above iliac crest oblique size 2 cm x 1 cm x ? deep with one angle acute.

(ix) Incised stab wound over left inguinal region 3 cm lateral to midline 14 cm obliquely below and medial to injury no.8, size 4 cm x $\frac{3}{4}^{\text{th}}$ cm x ? deep with one angle acute.

(x) Incised wound over left wrist region posterior aspect horizontal in nature 1 cm above left wrist region size 6 cm x 2.5 cm.

(xi) Incised wound over left elbow region posteriorly 1 cm above the elbow joint horizontal size 2 cm x $\frac{1}{2}$ cm.

(xii) Incised stab wound over left arm posteriorly medial aspect 6 cm below left axillary pit size 3 $\frac{1}{2}$ cm x 2 cm x muscle deep with one angle acute.

(xiii) Incised stab wound over back 8.5 cm below neck thoracic junction, 1 cm lateral wound midline on left side size 1.5 cm x $\frac{1}{2}$ cm x ? deep with both angle acute.

(xiv) Incised wound over left side back 12 cm lateral left midline 7 cm below lower end of left scapula curved "C" shape with skin flat size 2.5 cm x $\frac{1}{2}$ cm superficial.

(xv) Incised stab wound over left side back 9 cm lateral to left midline 11 cm below fracture lower end of left scapula size 3.5 cm x 1.1/4 cm with both angle acute x ? deep.

(xvi) Incised stab wound over left side back 4 cm below and medial to injury no.15, 4 cm away from midline, parallel to injury no.15, size 3 cm x 1 cm with ? Deep with one angle acute.

(xvii) Incised stab wound left side back 10 cm below injury no.15, 10 $\frac{1}{2}$ lateral to midline of left side of abdomen size 2 cm x $\frac{3}{4}$ cm x ? deep with one angle acute.

(xviii) Incised stab wound over back centrally 21 cm below neck thoracic junction oblique size 3 cm x 1 cm x fracture vertebral body one angle acute.

(xix) Incised stab wound over left side back 2 cm below injury no.18, 2 cm lateral to midline on left side size 4 cm x 1 cm x ? deep with one angle acute.

(xx) Incised stab wound over left side back 2 cm away from midline and 2 $\frac{1}{2}$ cm below and oblique to injury no.18 size 5 cm x 1 cm x ? deep with one angle acute.

(xxi) Incised stab wound over right side back 11 cm below lower end of right scapula and 11 $\frac{1}{2}$ cm lateral to midline from right side oblique size 2 cm x $\frac{1}{2}$ cm x ? deep both angles acute.

On internal examination, Dr.Tasgaonkar found fracture of right 4th, 5th and 6th rib. He also found that right lung and left lung were perforated as well as pleura was perforated due to stab wounds. He found that left kidney was also cut. In addition, Dr.Tasgaonkar found various other internal injuries. Dr.Tasgaonkar has stated that the cause of death of Ramsingh was haemorrhage

due to multiple injuries (unnatural). Dr.Tasgaonkar opined that external and internal injuries are possible by sharp edged weapons and it was possible by knives (Article Nos.7 and 8). It is pertinent to note that these knives were seized during the spot panchanama as these knives were found on the spot. PW-9 Rameshlal in his evidence has clearly stated that after the assault when he tried to catch hold of the appellants, the appellants threw away the knives in their hand and ran away.

11. The appellants threw knives at the spot and ran away which is clear from the evidence of PW-9 Rameshlal. These knives were seized under panchanamas Exhs.24 and 24A. These knives were sent to the Chemical Analyzer. As per the Chemical Analyzer's report (Exh.33), both knives were stained with

blood of 'A' group. As per Chemical Analyzer's report (Exh.21), blood group of deceased Ramsingh was "A". This shows that knives found on the spot were used by the appellants to assault Ramsingh.

12. Thereafter, Dr.Chaudhary tried to submit that it is not a case of murder i.e. the case would not fall under Section 302 of the Indian Penal Code but it would fall under Section 304 I of the Indian Penal Code. He submitted that the case would fall under the exception 1 that is grave and sudden provocation. In order to support his submission, he has placed reliance on the evidence of PW-2 Dr.Ali to show that Reband Shah was working as a watchman in Kohinoor Apartment. He was residing there with his young wife. Reband's wife had come to stay with him about one month prior to the

incident. On 02.01.2005 deceased had teased wife of Reband. Dr.Chaudhary submitted that Reband and his wife were Nepali. The appellants were also Nepali. They were enraged due to the fact that deceased Ramsingh had teased the wife of Reband Shah. Hence, on 04.01.2005 when the appellants saw Ramsingh, they assaulted him with knives. This submission does not appeal to us because the incident of teasing wife of Reband Shah occurred on 02.01.2005 and the incident occurred on 04.01.2005 at 06:30 p.m.. Hence, it cannot be said to be a cause of grave and sudden provocation. Looking to the number and nature of the injuries, it is clear that the appellants had every intention to cause the death of Ramsingh and hence, the case is squarely covered by Section 302 of the Indian Penal Code.

13. On going through the record, we find that there is sufficient evidence to prove beyond reasonable doubt that the appellants committed murder of Ramsingh by assaulting him with knives. Thus, we find no merit in the appeal.

14. Appeal is dismissed.

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