

Anand

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

CRIMINAL APPEAL NO.654 OF 2013

1. **Durgawati Ramkaran Morya**]Appellants
Age:42 yrs, Occu:Housewife]
(Presently lodged in Yerwada]
Jail)]
]
2. **Ramesh Ramkaran Morya**]
Age:22 yrs, Occu:Service]
(Presently lodged in Kolhapur]
Jail)]
]
Both are residing at Bldg.No.]
13/A/E/1 Ekata Co-op. Housing]
Society, Room No.204,]
Sangharsh Nagar, Chandivali,]
Sakinaka,]
Mumbai – 400 072.]

V/s.

The State of Maharashtra]Respondent

Mr.Sandip Singh a/w. Mr.R.S.Yadav, Advocate,
for the Appellant No.1
Ms Rohini Dandekar, Advocate appointed for
Appellant No.2
Mrs.A.S.Pai, APP, for the Respondent - State

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

DATE : 17TH FEBRUARY, 2015

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

. The appellants/original accused have preferred this Appeal against the Judgment and Order dated 20.04.2013 passed by the learned Additional Sessions Judge, Greater Bombay in Sessions Case No.32 of 2012. 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 them to imprisonment for life and a fine of Rs.5,000/- each, in default to suffer simple imprisonment for three months each.

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

The appellant No.1 Durgawati with her three sons Chandresh, Ramesh/appellant No.2 and Suresh was residing in Room No.204 of Bldg.No.13/A/E/1, Ekata Co-op. Housing Society, Sangharsh Nagar, Chandivali,

Sakinaka, Mumbai. Chandresh was addicted to liquor. He used to raise quarrel with his mother and brothers.

3. On 22.09.2011 at around 11.30 p.m. informant PW-1 Deepak Bhikaji Salve resident of the same building and his friend PW-8 Ganesh Pandurang Sakpal resident of opposite wing were chitchatting in the campus. They heard quarrel going in the house of appellants. At about 00.30 hours they heard the sound of breaking glass of window of appellants' house. Informant Deepak proceeded to the room of appellants. He saw appellants Durgawati, Ramesh and Suresh leaving the building hurriedly. That time Informant Deepak noticed blood stains on the saree of appellant No.1/Durgawati which gave rise to suspicion.

4. By that time neighbourers assembled in front of the building. PW-2 Bhagwan Anaji Kamble was the Chairman of Ekata Society. He

was called. Then all went to the room of appellants. They found the door latched from outside. They unbolted the door and entered the room. It was dark in the room. The lights were switched on. Bhagwan Kamble, informant Deepak and others found Chandresh, son of appellant No.1 and brother of appellant No.2 lying in pool of blood in injured condition near the cot. A knife and grinding stone stained with blood were also lying there. PW-2 Bhagwan Kamble informed Sakinaka Police Station on phone. The residents shifted the injured to Rajawadi Hospital. Medical officer examined the injured and declared him dead. AD No.105 of 2011 was registered at the police station. PW-12 PSI Sambhaji Ramchandra Mohite prepared inquest panchanama of the dead body. It was followed by panchanama of scene of occurrence drawn in the presence of panchas. From the spot, blood stained knife, grinding stone, one Blue full shirt and quilt were seized. The dead body was sent for post

mortem. PW-6 Dr.Shivaji Vishnu Kachare conducted the post mortem.

5. PW-10 PI Shivaji Parabrao Gavare attached to Sakinaka Police Station rushed to the spot. On inquiry from inhabitants of the building, it was revealed that at 11.30 p.m., there was a quarrel in the house of appellants and thereafter, they heard sound of breaking of glass of window of the house of accused. PW-1 Deepak Salve then went to police station and lodged report. C.R.No.374 of 2011 under Section 302 read with 34 of the Indian Penal Code and under Section 4 read with 25 of the Indian Arms Act was registered against the accused. On 23.09.2011 at 08.30 a.m. accused No.1 and juvenile offender Suresh were arrested. Arrest panchanama of accused No.1 was drawn and blood stained clothes on her person were seized. The blood samples and nail clippings of accused No.1 Durgawati and juvenile offender Suresh were collected. On

26.09.2011 articles seized from the spot and clothes on the person of accused No.1 were sent to Chemical Analyzer through PW-9 Police Head Constable Anil Narayan Mhamunkar. The blood samples and nail clippings of accused No.1 were forwarded to C.A. through PHC PW-9 Anil Mhamunkar on 30.09.2011. Accused No.2 Ramesh was arrested on 07.10.2011. During investigation, PI Shivaji Gavare recorded statements of several witnesses. On completion of investigation, charge sheet came to be filed before the learned Metropolitan Magistrate, 10th Court, Andheri, Mumbai who in own turn committed the case for trial to the Court of Sessions.

6. Charge came to be framed against the accused under Section 302 read with 34 of the Indian Penal Code. The factum of relationship between appellants and the deceased is admitted. It is not in dispute that at the relevant time, appellants, Suresh and deceased

Chandresh were residing in the said house. The defence of appellants in respect to commission of crime is of total denial and false implication. On going through the evidence adduced in the case, learned Additional Sessions Judge convicted and sentenced the appellants as stated in para 1 above. Hence, this Appeal.

7. We have heard the learned Advocates for the parties. We have carefully considered their submissions, the Judgment and Order passed by the learned Additional Sessions Judge and the evidence on record. On careful consideration of the same, we are of the opinion that there is no merit in the Appeal for the reasons mentioned below.

8. Needless to state that in a case of murder, factum of homicidal death is to be established beyond all reasonable doubt by the prosecution. PW-6 Dr.Shivaji Kachare conducted

the post mortem on 23.09.2011 between 10.45 and 11.45 a.m.. On external examination of dead body, doctor found the following injuries.

- (i) Incised wound at left temporal region above left ear size 3 cm x 1.5 cm bone deep. Reddish in colour one angle acute.
- (ii) Incised wound at left lateral of neck below left ear, size 3 cm x 1.5 cm bone deep, reddish in colour, one angle acute.
- (iii) Abrasion, parallel two in numbers at left lateral of neck, reddish in colour, size 1 x 0.1 cm, 1 x 0.1 cm.
- (iv) Healed scab form abraded wound at middle of skull blackish in colour, size 4 x 0.1 cm.
- (v) Incised wound at posterior lateral of left elbow, size 3.5 x 1.5 cm. mussel deep, reddish one angle acute.
- (vi) Incised wound at forefinger, terminal phalangeal region, size 2 x 2.5 cm. Mussel deep reddish in colour.
- (vii) Incised wound at right middle finger, forefinger, little finger. Terminal phalangeal. Size 2 x 1 cm mussel deep, 1 x 1 cm x 0.5 cm, 1.5 cm x 1 cm mussel deep, reddish in colour.
- (viii) Abrasion over right thoraco-abdominal region, oblique, reddish, size 9 x 0.1 cm.

- (ix) Incised wound at anterior. Abdominal wall, horizontal, size 11 cm x 2 cm x cavity deep, Reddish in colour.
- (x) Incised stab wound at right anterior abdominal wall, oblique, size 16 cm x 3 cm cavity deep. Reddish in colour, intestinal coils, part of abdominal organs, ruptured, protruded out. One angle acute.
- (xi) Incised stab wound at left anterior abdominal wall, extending posteriorly at left renal angle, size 18 cm x 4 cm cavity deep, reddish in colour, one angle acute, intestinal coils internal organs, rupture.
- (xii) Incised wound right shin lower leg, size 2 cm x 1.5 cm mussel deep, reddish in colour.
- (xiii) Incised wound at left lateral of lower leg, shin-lower part, size 1.5 cm x 1 cm mussel deep, reddish in colour.

All these injuries were antemortem.

Corresponding internal injuries noticed were mentioned in Column Nos.19, 20 and 21 of P.M. report. They are as follows :

- (i) Contusion over left fronto parietal region, size 5 cm x 2 cm reddish.
- (ii) Fracture of left temporal bone, size 1 x 0.1 cm, oblique.
- (iii) Meningeas – ruptured. Subdural and subarachnoid, hemorrhage at left fronto parietal and occipital region,

size 18 cm x 6 cm reddish in colour.

- (iv) Fracture 2nd 3rd wrist bilaterally at consochondral region.
- (v) Pleura – ruptured bilaterally.
- (vi) Crico-thyroid ring ruptured, size 1 x 0.1 cm reddish in colour.
- (vii) Right and left lung ruptured at apical region, haemorrhages.
- (viii) Walls and peritoneum-ruptured haemorrhages seen.
- (ix) Cavity contains ruptured part of intestinal coils and blood clot 100 cc.
- (x) Oesophagus – ruptured at lower part, reddish.
- (xi) Small intestine ruptured at many sides. Haemorrhages.
- (xii) Large intestine ruptured at transverse colon reddish.
- (xiii) Liver – ruptured at anteriolateral and inferior surface, size 8 x 4 x 2 cm reddish.
- (xiv) Pancreas and supraranal – ruptured reddish.
- (xv) Kidneys – ruptured reddish.
- (xvi) Bladder – ruptured reddish.

In the opinion of Dr.Kachare cause of death was haemorrhage and shock due to multiple injuries which were unnatural. The post mortem report is at Exh.26. Doctor opined that injuries noticed on the dead body were possible by the knife seized in the crime. The evidence of Medical officer has remained unshaken in the cross-examination.

Accused have admitted inquest panchanama (Exh.17) which also shows multiple injuries on the various parts of the dead body. Relying upon post mortem report and inquest panchanama, we find that the prosecution has succeeded in proving that the death in question was a homicidal death.

9. The prosecution case exclusively rests on circumstantial evidence. On circumstantial evidence learned counsel for appellant No.1 Mr.Singh relied upon ***Kishore Chand v. State of Himachal Pradesh*** [1990 CRI.L.J. 2289 (SC)]. In

this case, the Supreme Court has re-iterated well settled principles of law on circumstantial evidence.

10. It has been consistently laid down by the Supreme Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. A legal trend would further show that for a conviction in murder case on circumstantial evidence, following conditions must be fulfilled :

i) The circumstances from which the conclusion of guilt is to be drawn should be fully established.

ii) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is, they should not be explainable on any other hypothesis except that the accused is guilty.

iii) The circumstances should be of a conclusive nature and tendency.

iv) They should exclude every possible hypothesis except the one to be proved.

v) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and it must show that in all human probability, the act must have been done by the accused and the accused alone.

11. Keeping in view the settled law on circumstantial evidence, the evidence of prosecution witnesses examined in the present case needs to be meticulously scrutinized. The prosecution examined in all 12 witnesses. So far as the evidence of PW-11 Dr.Nagia Dalvi is concerned, it is not relevant in the present case as it relates to examination of juvenile offender Suresh.

12. The conviction of appellants is based on the following circumstances.

(i) Appellants and juvenile offender Suresh were seen by PW-1, PW-4 and PW-8 going out of the house.

(ii) The house of appellants was latched from outside.

(iii) **Failure of accused No.1 to explain the injuries on her person.**

(iv) **No explanation in respect to the blood stained clothes of accused No.1.**

(i) **APPELLANTS AND JUVENILE OFFENDER SURESH WERE SEEN BY PW-1, PW-4 AND PW-8 GOING OUT OF THE HOUSE.**

13. PW-1 Deepak Salve lodged FIR. He stated that he saw accused Ramesh, his brother Suresh, Durgawati and 2-3 persons going out of the building. Though he is a hostile witness, he partly supported the prosecution. FIR is proved by PW-10 PI Shivaji Gavare at Exh.36. It was recorded in the hospital. According to PW-4 Kishor, on 22.09.2011 at about 11.00 to 11.30 p.m. he and Arjun Pawar were chitchatting in the campus of the building. That time PW-8 Ganesh Sakpal and PW-1 Deepak Salve were sitting on a bike and chitchatting. They heard sound of breaking glass. Many persons gathered on hearing sound of breaking glass. He stated that glass fell down from the

2nd floor. That time he saw Durgawati, Ramesh and Suresh going out of the building.

14. The evidence of PW-4 Kishor is fully corroborated by PW-8 Ganesh Sakpal. It is stated by Ganesh that after hearing sound of breaking glass, he saw mother and two younger brothers of Chandresh coming down from the room and going out. PW-4 Kishor and PW-8 Ganesh Sakpal have identified accused Durgawati and Ramesh before the Court. The evidence of PW-4 Kishor and PW-8 Ganesh Sakpal could not be shaken in cross-examination and there is no reason for them to falsely implicate the accused. The conduct of the accused is thus relevant here.

(ii) THE HOUSE OF APPELLANTS WAS LATCHED FROM OUTSIDE.

15. PW-2 Bhagwan Kamble was the Chairman of Ekata Society. Room No.204 of the accused was situated in this society. Bhagwan Kamble

was residing in the same building. On 22.09.2011 he was present in his house. He stated that at 11.30 p.m. he heard sound of breaking glass. He came to the ground floor. He saw PW-4 Kishor, Arjun Pawar, PW-7 Mahesh Shivaji Khanwilkar, Rupesh Chavan and Uttam Gaikwad. They informed Bhagwan Kamble that they had seen Durgawati and her son Ramesh and Suresh going out of the building. Thereafter, Bhagwan Kamble with others went to room No.204. They found the door of the house latched from outside. By opening the door, they entered the house of accused. They found Chandresh lying injured near the cot. They also noticed grinding stone and knife lying there. Injured Chandresh was then shifted to Rajawadi Hospital by police. Bhagwan Kamble identified accused Durgawati and Ramesh before the Court. The testimony of Bhagwan Kamble is fully supported by PW-4 Kishor Kanar. Kishor also stated that door of the house of accused was latched from outside.

16. There is no dispute that at the time of incident, accused Durgawati, Ramesh, Suresh and deceased Chandresh were residing together. In such a case, accused have to explain how Chandresh sustained injuries and died. Section 106 of the Indian Evidence Act provides that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. If accused fails to offer an explanation on the basis of facts within his special knowledge, he fails to discharge the burden placed on him under Section 106 of the Indian Evidence Act and that itself provides an additional link in the chain of circumstances proved against him.

17. In the instant case, incident occurred in the midnight. Accused were in the house with the deceased. They have not furnished any explanation in relation to the injuries caused to the deceased and the circumstances in which he died. Failure of the accused to offer a

reasonable explanation in this regard is an additional link in the chain of circumstances proved against them.

(iii) FAILURE OF ACCUSED NO.1 TO EXPLAIN THE INJURIES ON HER PERSON.

18. PW-10 investigating officer PI Shivaji Gavare stated that accused No.1 Durgawati was arrested on 23.09.2011 at about 08.30 a.m.. On 24.09.2011 at 12.30 p.m. she was referred to Nagpada Police Hospital for medical examination. PW-5 Dr.Suchita Phad was the Medical officer on duty. She examined Durgawati. On examination, Medical officer noticed the following injuries.

(i) Circular incised wound on right index finger basal phalanx lateral aspect admeasuring 0.2 cm in diameter and reddish brown in colour.

(ii) Incised wound on left middle finger base of middle phalanx, palmar aspect, oblique in shape admeasuring 1.2 cm in length, skin deep tender reddish brown in colour.

(iii) Incised wound on left index finger terminal phalanx, palmar aspect admeasuring 1.5 cm in length, obliquely placed tender.

Medical officer opined that above injuries were caused by sharp edged weapon. Medical Certificate Exh.24 is proved by Dr.Phad.

19. Accused No.1 has come with a defence that she sustained the above injuries when she tried to save her son. The defence raised by accused No.1 is not established. Hence, this is the another clinching circumstance against the accused.

(iv) NO EXPLANATION IN RESPECT TO THE BLOOD STAINED CLOTHES OF ACCUSED NO.1.

20. PW-3 Arjun Tukaram Jadhav was examined on seizure of clothes of accused No.1 and Suresh. He was also a witness on Memorandum of accused No.2 under Section 27 of the Indian Evidence Act to discover his clothes. This witness has not supported the prosecution and he was declared hostile.

21. However, prosecution strongly relies upon the evidence of PW-10 PI Shivaji Gavare on seizure of clothes of accused No.1 and memorandum of accused No.2. PW-10 PI Gavare arrested accused No.1 on 23.09.2011 at 08.30 a.m.. Arrest panchanama is at Exh.19. It shows that blood stained clothes on the person of accused No.1 i.e. Saree, peticoat and blouse were seized at that time in the presence of panchas. Nothing substantial could be elicited in the cross-examination of PI Gavare to disbelieve his testimony.

22. Further, it appears that nicker of the deceased was seized while recording inquest panchanama Exh.17. The clothes of accused No.1 seized vide panchanama Exh.19 and nicker of the deceased seized at the time of inquest Exh.17 were sent to Chemical Analyzer along with the other articles found on the spot and the clothes of juvenile offender. The Chemical Analyzer's report is at Exh.14. It shows that

Exh.7 saree had innumerable blood stains ranging from 0.1 cm to 5 cm in diameter spread at places, Exh.8 parkar having considerable number of blood stains ranging from about 0.1 cm to 7 cm in diameter mostly on one side and Exh.9 blouse having few blood stains ranging from about 0.1 cm to 2 cm in diameter on left sleeve portion and front right side. The blood stains were of "O" group. The C.A.report also shows that Exh.12 nicker of the deceased was having blood stains at places. These stains were of blood group "O". Based on this, blood group of the deceased can be considered as "O". C.A. Report indicates that knife, quilt and full open shirt recovered from the spot were having blood stains of group "O". Accused have not furnished any explanation to this incriminating circumstance which links them with the commission of crime.

23. The above circumstances are consistent only with the hypothesis of the guilt of the

accused. They are of conclusive nature and exclude every possible hypothesis except the one to be proved. Through these circumstances prosecution has proved that in all human probability the act must have been done by the accused and accused alone.

24. During the course of arguments, learned counsel for the appellant No.1 Mr.Singh submitted that no specific role is attributed to each of the accused and this was not the case of pre-meditated or calculated murder and so exception 4 to Section 300 would be attracted. In support of his submission, Mr.Singh relied upon ***Ram Swarup v. The State of Haryana*** [1976 Supreme Court Cases(Cri) 524]. In this case, deceased was assaulted with lathi portion of a weapon like jaili. Iron portion of the weapon was not used. Considering the facts and circumstances in the given case, it was held by the Supreme Court that appellants could be guilty of an offence

punishable under Section 304 Part I of the Indian Penal Code rather than one under Section 302 of the Indian Penal Code.

25. In the present case, nature of the weapon used and manner of the incident differ. So the authority relied upon by the learned counsel for appellant No.1 would not be applicable.

26. In the light of the above, we find sufficient evidence to prove the guilt of the accused beyond all reasonable doubt. Therefore, we do not find merit in the Appeal. The Appeal is dismissed.

27. Office to communicate this order to the appellants through the concerned jail authorities.

28. We quantify the legal fees to be paid by the High Court Legal Services Committee to

the appointed Advocate for appellant No.2 Ms
Rohini Dandekar at Rs.5,000/-.

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