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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.603 OF 2014.

Shatrughna Madhav Meshram	]	
age: 38 years,	]	<u>Appellant</u>
r/o New MHADA Police Colony,	]	(Original
10-C, 201, Mahakali Caves Road,	]	Accused)
Andheri (E), Mumbai 400 093	]	

V/s.

State of Maharashtra	]	
MIDC Police Station Mumbai	]	..Respondent

Mr. Sonia Miskin, appointed advocate for the Appellant.
Mr. H. J. Dedia, APP for the Respondent/State.

CORAM : SMT. V. K. TAHILRAMANI, ACTING C.J. &
DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 11TH FEBRUARY 2016.

ORAL JUDGMENT: [Per: Dr. Shalini Phansalkar-Joshi, J.]

1. This appeal is preferred by the original accused, who stands convicted, by the judgment and order dated 23.12.2013 of Additional Sessions Judge, Greater Bombay, in Sessions Case No.176 of 2012, for the offence punishable under Section 302 of the Indian Penal Code and sentenced to suffer imprisonment for

life and to pay fine of Rs.25,000/- in default to suffer rigorous imprisonment for two months.

2. Brief facts of the appeal, can be stated as follows :-

Appellant was serving as Constable in Police Department and was residing alongwith his wife Kavita and two daughters by name Vishakha and Sonali in New Mhada Police Colony at Andheri. On the date of incident on 27.10.2011, at about 11.50 p.m. P.W.1 Police Constable Santosh Kute, who was on night patrolling duty in MIDC area, received message from Control Room that one injured lady was lying at 10C New Mhada Police Colony, Andheri. Hence he rushed there and found that some persons were gathered near stair case of the building and one lady wrapped in bed-sheet was lying in injured condition near the stair case. There was profuse bleeding from her injuries and she was not in a condition to speak. Enquiry was made with the persons gathered there and from P.W.6 Vishakha, it was transpired that said lady was her mother Kavita and she was assaulted with knife by her father, the appellant in this case.

3. P.W.1 Constable Kute then took the appellant, who was present, in custody and sent him to police station. Injured

Kavita was taken by P.W.1 Kute to Cooper Hospital. There Doctor declared her to be dead. P.W.14 PSI Khatpe has also reached Cooper hospital at that time. In the hospital itself, he recorded complaint of P.W.1 Kute vide Exh.22.

4. On this complaint C.R.No.594 of 2011 was registered. During the course of investigation, the inquest panchnama was made vide Exh.29 and dead body of Kavita was referred for postmortem examination. P.W.14 PSI Khatpe then made spot panchnama (Exh.24), on the same night. He seized broken knife with handle, broken pieces of bangles and Mangalsutra, which were lying there. The photographs of the spot were also taken vide exh.30.

5. P.W.15 PI Bhalshankar, thereafter has taken over investigation of the case. On 29.10.2011 itself he seized the clothes of the appellant under panchnama Exh.42. The seized Muddemal articles including the clothes of the deceased were sent to the the Chemical Analyzer. The Chemical Analyzer's reports are produced on record at Exh.12, 13, 19 and 20. The statements of witnesses were recorded and further to completion of investigation by P.W.15 PI Bhalshankar, has filed chargesheet

in the Court against appellant.

6. On committal of the case to the Sessions Court, trial Court framed charge against appellant vide Exh.3. Appellant pleaded not guilty and claimed to be tried raising defence of denial and false implication.

7. In support of its case, prosecution examined as many as 15 witnesses and on appreciation of their evidence, trial Court was pleased to hold guilt of the appellant to be proved beyond reasonable doubt and convicted and sentenced him as aforesaid.

8. This judgment of the trial Court is challenged in this appeal, by learned counsel for appellant; whereas supported by learned APP. In our considered opinion before adverting to the rival submissions advanced by them, it would be useful to refer to evidence on record.

9. The main plank of prosecution case is testimony of P.W.6 Vishakha, who is an eye witness to the incident. She is daughter of appellant and deceased Kavita and was residing alongwith them with her younger sister Sonali. As per her evidence, appellant was addicted to alcohol and hence quarrels used to take place between her mother and the appellant. She

has further deposed that on the date of incident when all of them were present in the house, her father gave fist blows to her mother and therefore, her mother ran away in the gallery. However, her father dragged her inside by holding her hand and then assaulted her with knife on stomach, chest, hands and thighs. Her mother again ran into gallery and fell down. She herself and her sister Sonali made hue and cry and therefore, neighbourers arrived and opened the door. Thereafter police also came there, made enquiry with her and she disclosed about the incident to the police. In evidence before the Court, she has identified the knife which was recovered from the spot.

10. She is cross examined at length by learned counsel for appellant, but except for some minor omissions, there is absolutely nothing worthwhile elicited in her cross examination to disbelieve her. The core of her testimony has remained unshattered to the effect that it was her father who has inflicted blows of knife on her mother on account of which her mother had sustained injuries. The only ground on which her testimony is challenged is that she is a child witness. It is urged that at that time of giving evidence in the Court she was running age of 10

years; whereas at the time of incident which took place in the year 2011, she was 8 to 9 years of age. According to learned counsel for appellant, therefore, the possibility of her being tutored by the parents of her mother cannot be ruled out. However, in our considered opinion that possibility hardly existed in the instant case as her presence at the spot cannot be disputed and as per evidence of P.W.1 Constable Kute, immediately after the incident on the spot itself, he made enquiry with her and she has disclosed as to how her mother has sustained injuries due to assault by her father. This fact is found mentioned in the complaint Exh.22 also, which is recorded in the hospital within few hours of the incident that is much prior to parents of deceased Kavita met P.W.6 Vishakha.

11. Moreover, law nowhere states that evidence of child witness is required to be discarded altogether. Conversely, law recognizes the child as a competent witness. The only precaution expected is that the court should evaluate evidence of child witness carefully, the only reason being such child witness is susceptible to tutoring. However, in the instant case as we do not find that there was any opportunity or occasion for the

parents of Kavita to tutor P.W.6 Vishakha that aspect of of her susceptible to tutoring so as to disbelieve her evidence, is not present. Moreover, P.W.6 Vishakha, appears to be sufficiently matured as at the time of incident, she was studying in fifth Standard and after putting some questions and showing some articles to her, trial Court found that she was capable and competent to give evidence, that too on oath. Moreover, it does not appeal to reason that at the instance of some relatives, she will falsely implicate her own father in the murder of her mother, unless it was a fact.

12. Moreover, in this case, evidence of P.W.6 Vishakha is not a sole piece of evidence. There is also corroborating evidence of other witnesses like P.W.4 Shantaram and P.W.1 Santosh Kute, P.W.9 ASI Waghole and P.W.8 Nandu. According to P.W. 4 Shantaram Shinde, on hearing shouts from the house of appellant, he rushed there and found door of the room was closed from inside. Several other persons gathered there. He knocked on the door. The appellant opened the door. When this witness entered into room, he found that Kavita was lying in injured condition in the gallery. Blood was oozing from her neck,

abdomen and back. P.W.6 Vishakha and her sister Sonali were also present there. According to his evidence, he called the other persons and and with their help wrapped injured Kavita in bed-sheet, brought her to the ground floor in order to take her to the hospital. Meanwhile somebody gave message to police and mobile van came there which took the appellant to police station and injured Kavita to the Hospital.

13. Evidence of P.W.1 Constable Kute and P.W.9 ASI Waghole, who were on duty on the mobile van, further gives support to this evidence. As stated above, it was P.W.1 Constable Kute, who had made enquiry with P.W.6 Vishakha and thereafter his complaint (Exh.22) was recorded in the hospital by P.W.14 PSI Khatpe.

14. P.W.8 Nandu Sangle, was residing on the fourth floor in the same building where appellant was residing, proves that on the date of incident, after dinner while he was taking rest, he heard hue and cry coming from below his floor, hence he rushed to the second floor of room No.201, where appellant was residing. He saw many people residing in that building had gathered there, the door of that room was found closed. Hence

with the help of some neighbours, door was opened. They went inside and found two daughters of appellant and deceased present there. Appellant was also found in the room. Appellant's wife Kavita was lying in injured condition on the floor. The blood was spread in the room. The clothes of Kavita were drenched with blood. According to his evidence, then with the help of others, injured Kavita was wrapped in bed-sheet and brought to ground floor. Thereafter she was taken in mobile van by police to hospital and appellant was apprehended from the spot. This witness is independent one and his evidence proves the presence of P.W.6 Vishakha and appellant very much in the room.

15. The only ground on which his evidence is challenged is that of delay in recording of his statement by the police. It is urged that the incident has taken place on 27.10.2011; whereas his statement is recorded on 3.11.2011. According to learned counsel for appellant, no explanation is offered for such delayed recording of statement. We are, however, not inclined to accept this contention because mere delay in recording of the statement is no ground to disbelieve his evidence, unless and until Investigating Officer was confronted about it so as to offer

him an opportunity to explain, the reason for delayed recording of statement. In the present case, there is absolutely no cross examination of P.W.15 PI Bhalshankar, who has conducted further investigation. Even P.W.14 PSI Khatpe is also not confronted about the reason for not recording of statement of this witness immediately after the incident. In such situation, there is no reason to disbelieve the evidence of this witness, especially because he appears to be an independent and natural witness, who has rushed to the spot on hearing shouts and commotion.

16. The evidence of P.W.2 panch Anil Chavan goes to prove that blood stained knife and its handle were seized from the spot itself alongwith pieces of broken bangles and Mangalsutra. The Chemical Analyzer's reports prove presence of human blood stains on the blade of knife and clothes of the appellant.

17. The medical evidence in this case also goes hand in hand with ocular and other corroborating evidence on record. P.W.13 Dr. Vijay Tasgaonkar has conducted postmortem on the dead body of Kavita and found following external injuries, which he has noted in Column No.17 of postmortem Notes Exh.44.

- ➔ Incised stab wound on right side of face 1 cm below right ear lobule, almost horizontal size 2.5 cm x $\frac{1}{2}$ cm bone underneath in linear scratched one angle acute.
- ➔ Incised stab wound on right mandible 8 cm mid line size 1.5 cm x 1 cm. Bone underneath cracked in linear nature one angle acute.
- ➔ Incised stab wound on left side of face on left mandible, one side region size 1 cm x $\frac{1}{2}$ cm muscle deep on left side of mandible.
- ➔ Penetrating wound of entry on left arm laterally middle $\frac{1}{3}$ region oblique size 3.5 cm x 1 cm one angle acute with inverted margin.
- ➔ Penetrating wound of exit on left arm medial aspect size 2 cm x 1 cm with averted margin with one angle acute.
- ➔ Incised stab wound on right side of abdomen 6 cm away from mid line horizontal size 1.5 cm x $\frac{1}{2}$ cm muscle deep one angle acute.
- ➔ Incised stab wound on right lateral side of abdomen in mid axillary line 21 cm away from mid line oblique size 2 cm x $\frac{1}{2}$ cm x cavity deep one angle acute.
- ➔ Incised stab wound on left side of back 10 cm away from mid line 16 cm below left scapula vertical size 2 cm x $\frac{1}{2}$ cm deep muscle deep on one angle acute.

P.W. 13 Dr. Tasgaonkar, also found following internal injuries on the dead body.

- ➔ Contusion on right frontal region, brownish colour, size 4 cm diameter.
- ➔ Contusion on left occipital region, red colour, size 1.5 cm x 1 cm.
- ➔ Right 9th inter coastal space perforated due to external injury No.(VII) of column 17.
- ➔ Liver perforate due to external injury No.VII of column No.17 with right dome of diaphragm line

18. He has noted these injuries in postmortem report at Exh.44. According to him, these injuries are possible with muddemal article Nos. 1 & 2 blade of the knife. His evidence proves that the cause of Kavita's death was haemorrhage and shock due to incised stab wounds.

19. The prosecution has, thus proved not only homicidal death of deceased Kavita, but the fact that unnatural death has taken place in her own house; wherein appellant was very much present. Naturally the onus was on the appellant to explain

injuries found on the person of Kavita. Appellant has not offered any explanation worth the name. Conversely, the evidence of P.W.6 Vishakha, daughter of appellant, clearly implicates the appellant with offending act of inflicting multiple blows of knife on her mother. The blows were so forceful that even the handle of the knife was broken and there were as many as 8 stab wounds.

20. In our considered opinion, in the face of this overwhelming evidence produced on record by prosecution, no other inference except that of the guilt of the appellant can be drawn. The trial Court, has therefore, rightly held the guilt of the appellant to be proved beyond reasonable doubt and convicted and sentenced him for the offence punishable under Section 302 of IPC. The appeal, holds no merit. Hence stands dismissed.

21. The fees of Legal Aid Counsel appointed to defend the appellant are quantified at Rs.5,000/-.

[ACTING CHIEF JUSTICE.]

[DR. SHALINI PHANSALKAR-JOSHI, J.]