

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

CRIMINAL APPEAL NO.133 OF 2010

Lalasaheb Musafir Shaikh
Age : 28 yrs., Occ : Truck Driver,
R/o 100 feet rd. Shamraonagar,
Behind Rajjak Garaje Bhosale Plot,
Dist – Sangli.

... Appellant/
Orig. Accused

versus

The State of Maharashtra
(At the instance of
Vishrambag Police Station)

... Respondent

.....

- Mr.Kedar Patil with Rohini Dandekar, Advocate for the Appellant.
- Mr.H.J. Dedhia, APP for the State/Respondent.

**CORAM : A.A. SAYED &
SARANG V. KOTWAL, JJ.
RESERVED ON : 25th SEPTEMBER, 2017
PRONOUNCED ON : 12th OCTOBER, 2017**

JUDGMENT (PER : SARANG V. KOTWAL, J.) :

1. The present Appeal is preferred by the Appellant challenging the Judgment and Order dated 29/12/2009 passed by the Ad-Hoc Additional Sessions Judge, Sangli, in Sessions

Case No.112/08, whereby the Appellant was convicted for the offence punishable u/s 302 of the Indian Penal Code and was sentenced to suffer imprisonment for life and to pay a fine of Rs.1,000/- and in default of payment of fine to undergo rigorous imprisonment for six months. He was also convicted for the offence punishable u/s 309 of IPC and was sentenced to suffer simple imprisonment for one year. Both the substantive sentences were directed to run concurrently. The Appellant was given benefit of set off u/s 428 of Cr.P.C.

2. The prosecution case pertains to murder of one Reshma, who was the wife of the Appellant. As per the prosecution case, the Appellant committed her murder on 08/04/2008 at 01.30 p.m. in their matrimonial house in Sangli by assaulting her with sickle and stabbing her with a broken bottle. It was alleged that the Appellant was suspecting her character and that was the reason for which he committed her murder.

3. The FIR was lodged by one Fatima @ Asma Akbar Shaikh, sister-in-law of the Appellant at Sangli Police Station, which was registered vide C.R.No.60/08 u/s 302 and 309 of the Indian Penal Code. Pursuant to the said FIR, the investigation was carried out. Spot panchanama, inquest panchanama and post-mortem examination were conducted. The statements of various witnesses were recorded. The statements of first informant Fatima Shaikh and her husband were recorded u/s 164 of Cr.P.C.. The Appellant was arrested soon after the incident. After completion of the investigation, charge-sheet was filed and thereafter the case was committed to the Court of Sessions.
4. During the trial, the prosecution examined 20 witnesses, including Investigation Officer, medical officer and Panchas. The learned Magistrate, who had recorded the statement u/s 164 of Cr.P.C., was also examined.
5. P.W.6 Dr.Shahnawaj Ashakalli Naikwade had

conducted the post-mortem on the dead body and had found 14 injuries. The injuries were present on the head, shoulder, lower back and the injuries were incised wounds. There were six incised wounds on the head, which were caused by a sickle and rest of the eight injuries were caused with the help of a broken glass bottle. On internal examination, it was found that she suffered linear fracture of left parietal bone and sub dural haemorrhage over the parietal area. Cause of death was given as death due to 'Craniocerebral injury'. This witness, P.W.6, has stated that the injuries were possible with an iron sickle and a broken glass bottle.

6. P.W.1 Abdul Rahim Mahomad Mashak Maniyar was the brother of the deceased. He has stated that the Appellant had married the deceased three years prior to the incident and they had a son and a daughter from the said wedlock. He has further stated that the Appellant and the deceased were residing in a joint family in their matrimonial house with the parents and brother's family of the Appellant. He has deposed that the

Appellant was a truck driver and was addicted to liquor and that he was suspecting Reshma's character. He has deposed that whenever Reshma used to meet this witness and her other family members, she used to inform them about such harassment. He has further deposed that when the incident occurred, they reached Sangli in the night at about 02.00 a.m. At that time, the deceased was kept in the hospital. The deceased had already succumbed to her injuries. After the post-mortem, the dead body was handed over to his father. He has deposed that father of the Appellant had told him that the Appellant had committed murder when nobody was at home. P.W.2 Mahomad Mashak Abdul Rahiman Maniyar, was the father of the deceased and he has deposed on the similar lines as those of P.W.1.

7. P.W.3 Fatima Shaikh is an important witness in this case. She was the wife of the Appellant's brother Akbar Shaikh. She has deposed that she was residing with her husband, the deceased and the Appellant together in one house. She deposed

before the Court that the Appellant was having good relations with the deceased Reshma. She further deposed that on the date of incident she had gone to the market and when she returned home, she saw many persons had gathered outside her house. She has not further deposed about the nature of the incident. This witness has resiled from her previous statement before the police and the Magistrate and therefore she was declared hostile.

8. This witness was cross examined by the APP. In the cross examination she admitted that she herself had lodged the FIR. She further admitted that on 28/05/2008 J.M.F.C. Sangli had recorded her statement and she has further admitted that the statement shown to her was the same, which was recorded by the learned Magistrate. The said statement was exhibited at Ex.19 and 20. She further admitted that the contents of the said statement were correct. She had deposed that, she had lodged the FIR, which was exhibited at Ex.18. In the said FIR she has stated that, on 08/04/2008 at about 01.30 p.m., she was inside the house and at that time, the Appellant and the deceased were

watching TV in another room. She heard shouts and abuses from their room. The room was locked from inside. Thereafter she called her husband. When other family members came there, the Appellant opened the door and at that time they saw that the deceased was lying dead inside the room and the Appellant was having blood stains on his clothes and there were fresh injuries on his hands and thereafter she had lodged the FIR.

9. Whereas, in her statement recorded u/s 164 of Cr.P.C. Dated 28/05/2008, she has deposed that in the afternoon on 08/04/2008, the Appellant and the deceased were in another room. When this witness heard shouts, she knocked the door, there was no response. Therefore she called her husband Akbar Shaikh. She was told by her husband that the Appellant had committed murder of the deceased.

10. Thus, it can be seen that though this witness has lodged FIR, she has clearly made an attempt to save her brother-in-law i.e. the present Appellant. The fact remains that her

statement was recorded by the JMFC and this witness has admitted the contents of the said statement to be true. Though even in that statement she has not described as to what happened after her husband returned home, she has stated that the Appellant and the deceased were inside the room and the room was locked. This fact which is proved through her statement u/s 164 of Cr.P.C. and which is admitted by her as true, shows that this is one of the incriminating circumstances against the Appellant, that, at the time of commission of offence, he was inside the room with the deceased.

11. The next witness P.W.4 Akbar Musafir Shaikh is younger brother of the Appellant and the husband of P.W.3 Fatima Shaikh. He has not supported the prosecution case before the trial Court and he has merely stated that on 08/04/2008, when he returned home at about 04.30 to 05.00 p.m., he saw that many persons had gathered in their house and Reshma was lying on the cot. Though this witness has not admitted the contents of his statement u/s 164 of Cr.P.C. he has

admitted his signature on the same. In the said statement, he has stated that, when he returned home, his brother, the Appellant, was not opening the door of the room. After some time, the Appellant opened the door and this witness saw the dead body of Reshma lying on the bed.

12. This part of his statement is duly proved by the prosecution through the evidence of the learned JMFC, Sangli and the statements marked as Ex.22, 23 are duly exhibited. This witness has given further details in his statement before the police, but he has denied that he ever made such statements before the police, when his statement was recorded. He has stated before the police that the Appellant used to suspect character of the deceased. He also stated that when he saw the Appellant in the house on 08/04/2008, there were injuries to his both hands. This portion from his statement was duly proved in the Court, through the evidence of the investigating officer. Thus, though this witness has not supported the prosecution case, there is sufficient material on record to show that, he had

given different versions before the police and the learned JMFC, pointing out incriminating circumstances against the Appellant.

13. P.W.5 Jayshree Sanjay Jagdale was the Judicial Magistrate First Class, who had recorded the statements of P.W.3 and P.W.4 u/s 164 of Cr.P.C. and has duly proved the same.
14. P.W.7 Dr.Basappa Sidrayya Koli had examined the Appellant at about 04.15 p.m. on 08/04/2008 at Civil Hospital and he had found that the Appellant had two contused lacerated wounds i.e. over left wrist joint inner aspect 4 cm x 3 cm x bone deep and over inner aspect of right palm, which was 4 cm x 2 cm x 1 cm.
15. P.W.8 Dr.Pandharinath Gama Sadakale had collected the sample of blood of the Appellant for analysis.
16. P.W.9 Munir Amir Hamja Momin was one of the Pancha for the spot panchanama, who had described the spot of

incident i.e. the house of the Appellant and he has stated that the police had collected broken bangle pieces, green glass bottle pieces and blood stained sickle lying near the spot. P.W.11 Harish Shobrajmal Tanwani was a Pancha for the arrest of the Appellant and seizure of his clothes. He turned hostile. P.W.12 Sunil Baban Hande had carried the articles to FSL, Pune. P.W.14 Ashok Bhanudas Patil was the Pancha, in whose presence the clothes of the deceased were recovered. P.W.15 Nandkishor Vasantryao Dalvi, P.N., had reached the spot in first point of time. He had removed the Appellant to the Civil Hospital for medical treatment and this witness was a part of the initial investigation. P.W.16 ASI Sadashiv Kallappa Algur was the Investigating Officer, who conducted the investigation on 08/04/2008. P.W.17 PSI Arvind Shidoba Bodke had registered the FIR given by P.W.3 Fatima Shaikh. He had registered the C.R. on 08/04/2008 at Sangli City Police Station u/s 302 and 309 of IPC. He has proved the contents of the FIR given by P.W.3 Fatima Shaikh. P.W.18 Abhijit Suresh Ghongade was the photographer, who had taken photographs of the scene of

offence. P.W.19 ASI Ram Sambhaji Abangrao carried out the investigation after 08/04/2008. He had arrested the Appellant at about 08.30 p.m. on 08/04/2008. He had requested the learned JMFC, Sangli for recording the statements of P.W.3 and P.W.4 u/s 164 of Cr.P.C. and their statements were recorded on 27/05/2008 and 28/05/2008. P.W.20 Tanaji Dattu Hange was a Circle Officer and had drawn map of the place of incident.

17. After the prosecution evidence was closed, the learned trial Judge, recorded the statement of the Appellant u/s 313 of Cr.P.C. and at that time, the Appellant has taken a defence that some miscreants were teasing and harassing his wife and he scolded them and those persons had committed the murder of the deceased and in the same incident had caused injuries to the Appellant.

18. We have heard the learned counsel Mr.Kedar Patil and Mrs.Dandekar appearing for the Appellant and learned counsel Mr.Dedhia, APP for the State.

19. The learned counsel submitted that there are no eyewitnesses to the incident. The prosecution has not proved the motive behind the murder. The evidence of P.W.3 and P.W.4 cannot be taken into consideration, as they have turned hostile and if their evidence is left out of consideration, there was no material on record implicating the present Appellant. The explanation offered by the Appellant in his examination u/s 313 of Cr.P.C., is probable explanation of events and should be relied on and the benefit should be given to the Appellant.

20. The learned counsel for the Appellant has relied on a judgment of Allahabad High Court, passed in the case of ***Phool Chand and etc. Vs. State of U.P., reported in 2004 Cr.L.J. 1904***. The said judgment discusses the evidentiary value of the statement given u/s 164 of Cr.P.C. In the said case, it was stated that the statement u/s 164 of Cr.P.C. cannot be used for corroboration of the evidence, but it can only be used for proving the contradictions. In the present case, the prosecution

has used the statement u/s 164 of Cr.P.C. only for the purpose to prove the contradictions. Therefore this judgment does not help the submissions of defence counsel.

21. After going through the evidence and hearing the arguments of both the sides, we find that the case mainly rests on the circumstantial evidence. There are no direct eyewitnesses, who had seen the actual assault by the Appellant on the deceased. P.W.1 and P.W.2 who are the brother and father of the deceased respectively, have deposed about the harassment caused to the deceased by the Appellant, as he was addicted to liquor and also because he was suspecting her character. There is no serious challenge to this evidence. The crucial question in this case is as to what is the evidentiary value of the deposition of the evidence given by the prosecution in the form of P.W.3 and P.W.4, who are sister-in-law and brother of the Appellant respectively. Both these witnesses are highly interested witnesses, who obviously want to save the Appellant. P.W.3 was in the house in another room, when this offence was

committed. Though, she has denied her statement in the FIR and also the story that when the door was opened by the Appellant, the deceased was lying on bed and the Appellant was having blood stains on his clothes. She has denied that she had made such statement in her complaint. However, the Investigating Agency wisely got her statement recorded before the learned J.M.F.C., Sangli u/s 164 of Cr.P.C. and during the deposition before the trial Court in this case, this witness has admitted that she has given such statement before the Learned Magistrate. Therefore the statement u/s 164 of Cr.P.C. is duly proved. Even in this statement she has tried to save the Accused/Appellant. This statement was recorded after more than one month of the incident and she had obviously sufficient time to discuss the matter with her husband and other family members. Therefore she has given this statement carefully to protect the Appellant. But even then she could not escape the basic facts of the case that she was present in the house, when the incident had taken place.

22. Similar is the case with the evidence of P.W.4 Akbar Shaikh. He has not supported the prosecution case when he deposed before the trial Court in this case. He has denied that he had given any statement against the Appellant either before the Police or before the JMFC, Sangli. However, his statement u/s 164 of Cr.P.C.. is duly proved by the evidence of P.W.5 Jayshree Jagdale, who was the JMFC and who had recorded his statement u/s 164 of Cr.P.C. The Investigating Officer has proved the contradictions between the police statement and the deposition of this witness. These contradictions are proved and are exhibited at Ex.95, 96 and 97 respectively. These contradictions show that this witness has stated before the police that, when he reached home at the behest of his wife, the Appellant opened the door of the bedroom after some time and this witness had seen that Reshma was lying on the bed with injuries all over her body. The Appellant had injuries on his hands and his clothes were stained with blood. He had also stated that the Appellant was admitted to hospital.

23. The statement u/s 164 of Cr.P.C. of this witness only mentions that when he reached home, the Appellant did not open the door of the room for some time and when he opened the door, this witness saw the dead body of Reshma lying on the bed. Thus, his previous statement is duly proved, where he has positively given statement against the Appellant, which is a strong piece of evidence against the Appellant.

24. The murder weapons i.e. the sickle and broken glass bottles were found at the spot. The Appellant was very much present in the room with the injuries on his hands. Even in his statement u/s 313 of Cr.P.C., the Appellant has not denied his presence in the house, when the incident had taken place. Though he has ascribed the role of commission of assault on himself and his wife by some unknown persons from his locality.

25. Taking overall view of the matter, it can safely be concluded that the incident had taken place inside the bedroom of the Appellant and the deceased. The room was locked from

inside when the witnesses arrived at the spot. The Appellant opened the door and at that time there were injuries on his hands. The deceased was lying in a pool of blood with injuries over her head and other parts of the body. The Appellant has failed to give any plausible explanation about the injuries on his person and as to how his wife was assaulted. The P.W.1 and P.W.2 have proved that the Appellant was suspecting the character of the deceased and that was the motive behind the offence. Thus, we are of the opinion that the prosecution has proved its case beyond reasonable doubt against the Appellant and the impugned judgment and order, do not suffer from any infirmity and do not need any interference. Hence, the following order :

ORDER

The Appeal stands dismissed.

(SARANG V. KOTWAL, J.)

(A. A. SAYED, J.)