

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 23 OF 2014

Kadarbadshah Mohiddin Shaikh	]
Age 57 years, Occ: Labour	]
Residing at N.L.-4/65/3,	]
Sector-11, Nerul, Navi Mumbai	]
(Confined as Convict No. C-5955	]
Kolhapur Central Prison, Kalamba,	]
Kolhapur	].. Appellant
	[Ori.Accused]

Vs.

The State of Maharashtra	]
(At the instance of Nerul Police Station]	
Navi Mumbai in CR No. I-355 of 2008	]
tried in Sessions Case No. 92 of 2009	].. Respondent

....

Mrs. Farhana Shah Advocate appointed for the Appellant
Mrs. G.P. Mulekar A.P.P. for the State

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CORAM : SMT.V.K.TAHILRAMANI ACTING C.J.
AND M.S.KARNIK, J.
DATED : JANUARY 12, 2018

ORAL JUDGMENT: [PER SMT. V.K. TAHILRAMANI, J.]

1 This appeal is preferred by the appellant - original accused against the judgment and order dated 29.6.2013 passed by the learned District Judge-6 and Additional Sessions Judge, Thane in Sessions Case No. 92 of 2009. By the said judgment and order, the learned Sessions Judge convicted the appellant under Section 302 of IPC and sentenced him to R.I. for life.

2 The prosecution case, briefly stated, is as under:

(i) The appellant was the husband of PW 1 Rabiya. They had one son Mubarak who was about 23 years of age at the time of the incident. The appellant used to work in Kuwait for about 18 years prior to 2008. The appellant came to India in November, 2007. After coming to India, he was residing with his wife and son Mubarak at Nerul, Navi Mumbai. The appellant was working as driver on a private vehicle. The appellant was addicted to liquor. As the appellant was not attending his duty as driver regularly, he was removed from his job. Thereafter, the appellant started beating his wife Rabiya and son Mubarak. He used to abuse them in filthy language. Since about three

months prior to the incident, the appellant was giving threats to his son Mubarak that he would kill him.

(ii) The incident occurred in the morning of 26.11.2008. On 26.11.2008 at about 6.00 a.m. Rabiya left the house. At that time, Mubarak was sleeping in the hall of their house. Rabiya returned back home at about 9.15 a.m. and saw the door of the house was partly open. After she entered the house, she saw her son Mubarak lying in a pool of blood. She also saw one big stone (grinding stone i.e. Vervanta) lying near the head of her son Mubarak. Rabiya started shouting. Thereupon, neighbours gathered on the spot. Her relatives also reached the spot. They took Mubarak to Dr. D.Y. Patil Hospital for treatment. However, on examining Mubarak, the Doctor declared that he was dead. Rabiya then lodged F.I.R. In the said F.I.R. she stated that her husband i.e. the appellant murdered her son Mubarak by assaulting with a grinding stone. Thereafter investigation commenced. After completion of investigation, the charge sheet came to be filed.

3 Charge came to be framed against the appellant

under Section 302 of IPC. 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 the present case, the learned Judge convicted and sentenced the appellant as stated in para 1 above, hence, this appeal.

4 We have heard the learned counsel for the appellant and the learned A.P.P. for the State. After giving our anxious consideration to the facts and circumstances of the case, arguments advanced by the learned counsel for the parties, the judgment delivered by the learned Judge and the evidence on record, for the below mentioned reasons, we are of the opinion that the appellant committed the murder of his son Mubarak.

5 The case is entirely based on circumstantial evidence. In order to show that the appellant committed the murder of his son Mubarak, the prosecution is relying on the evidence of PW 1 Rabiya, PW 3 Daulatnisha, PW 4 Mehajabeen, PW 6 Tushar, PW 8 Ganesh, PW 9 Utsav, PW 10 Mohiddin and PW 12 Afroz. PW 1 Rabiya was the wife of the appellant. She has stated that her

husband i.e. the appellant was working as a driver, the appellant used to consume liquor all the time and under the influence of liquor, he used to give abuses to her and her son. The appellant also used to frequently beat her. The appellant used to give abuses to her on the ground of her character. The appellant also used to assault Mubarak. PW 1 Rabiya has further stated that since three months prior to the incident in question, the appellant was giving threats to Mubarak that he would kill Mubarak. Rabiya went to police chowky to lodge complaint but her son Mubarak stopped her from doing so, hence, she did not lodge complaint. The evidence of Rabiya shows that on 23.11.2008 at about 9 p.m. the appellant came to their house under the influence of liquor. The appellant gave abuses to Rabiya by raising suspicion about her character. Mubarak persuaded the appellant not to abuse. Thereafter at about mid-night, the appellant left the house and he did not come back to their house for about 2 days. On 26.11.2008 at about 6.00 a.m. she left the house. At that time, Mubarak was sleeping in the hall of their house. Rabiya returned back home at about 9.15 a.m. when she saw the door of the house was partly open. After she entered the house, she saw her son

Mubarak lying in a pool of blood. She also saw one big stone (grinding stone i.e. Vervanta) lying near the head of her son Mubarak. Rabiya started shouting. Thereupon, neighbours gathered on the spot. Her relatives also reached the spot. They took Mubarak to Dr. D.Y. Patil Hospital for treatment. However, on examining Mubarak, the Doctor declared that he was dead. Rabiya then lodged F.I.R. Thus, the evidence of Rabiya shows the motive for the appellant to commit the murder of his son Mubarak. Rabiya's evidence clearly shows that since three months prior to the incident, the appellant was giving threats to Mubarak that he would kill him.

6 The evidence of PW 3 Daulatnisha, PW 4 Mehajabeen and PW 12 Afroz also brings out the motive for the appellant to commit the murder of his son Mubarak. PW 3 Daulatnisha is the daughter of the appellant. She has stated that the appellant was her father, Rabiya was her mother and Mubarak was her brother. In the year 2008 her parents and her brother Mubarak were residing at Nerul in Navi Mumbai. Daulatnisha was residing at Trombay which is near Navi Mumbai. According to Daulatnisha, in the year 2007 her father came to India from Kuwait and started residing with her mother and brother

Mubarak at Nerul in Navi Mumbai. Prior to coming to India, her father was in Kuwait for 17 years. While in Kuwait, her father was also jailed for drunken driving for which he was convicted. Two months after her father coming to India, her father got employment, hence, he started getting salary. After that he started consuming liquor. The appellant used to abuse her mother and brother Mubarak. Her father i.e. the appellant was alleging that her mother Rabiya and her brother Mubarak were having an illicit relation with each other. This was going on for a period of almost one year. In October, 2008 being fed up by the illtreatment given by his father to him, Mubarak left the house and was out of the house for a period of one month. After the period of one month, Mubarak again came back to the house of his mother and started residing with his parents. On the night of 23.11.2008, the appellant came to his house after consuming liquor. That night, the appellant left the house and did not come back. On 25.11.2008 at noon, Daulatnisha received a phone call from his father who told her that he did not like his son and when time comes, he will cut him and throw him i.e. *"Mai Aaisa Beta Pasand Nahi Karata Hoo, Vakta Anepe Mai Usako Katke Fek Dunga."* Daulatnisha tried to pacify her

father, whereupon, her father told her *“Mai Aaisa Kamina Bap Hoo Ke, Tum Lok Sochenge Ki Aaisa Bhi Koi Bap Hota Hai.”* On 26.11.2008 at about 9.30 a.m. Daulatnisha received a phone call from her brother-in-law asking her to immediately come to Nerul, Navi Mumbai. When she reached the house of her parents, she came to know that her brother was taken to Dr. D.Y. Patil Hospital, Nerul for treatment. When she went to the hospital she came to know that her brother was dead. She also came to know that her father had committed the murder of her brother. Thus, the evidence of Daulatnisha also shows the motive for the appellant to commit the crime.

7 PW 4 Mehajabeen was the daughter of the appellant and Rabiya. She was residing with her husband at Nerul, Navi Mumbai. She was the sister of Mubarak. She has stated that her father was in Kuwait for about 18 years prior to 2008. He came from Kuwait to Nerul, Navi Mumbai in the month of November, 2007. After coming to Nerul, Navi Mumbai, he started working as a driver on a private vehicle. He was addicted to liquor. He was removed from his job as he was not attending his duty regularly. Thereafter, her father used to beat

her mother Rabiya and her brother Mubarak and the appellant used to abuse them in filthy language. At that time, the appellant was telling her mother that if he dies, he will take her with him. Her father was also saying to her brother that if the appellant dies, he will take Mubarak with him. Though, Mehajabeen was married, she used to often visit her parents. In her presence, on about 10 to 12 occasions, there were quarrels between her father on one side and her mother and brother on the other side. Mehajabeen has further stated that she was at her matrimonial home on 26.11.2008. At about 8.30 a.m. to 8.45 a.m. on that day, she had gone to Chamunda Kirana stores to purchase some grocery articles. The evidence of PW 7 Suryawanshi shows that Chamunda Kirana Stores is situated opposite the house of the appellant. Mehajabeen has stated that at about 8.30 a.m. to 8.45 a.m. she had seen her father was proceeding towards Shivaji Chowk, Navi Mumbai. She saw that his pant and his shirt were stained with blood. After purchasing the grocery articles, she came back to her house. At about 9.20 a.m., her mother came to her house. She was weeping at that time. Her mother told her that her father had killed her brother Mubarak in the house. She accompanied

her mother to the house. On going to the house, she saw her brother was lying in a pool of blood. One big stone was lying on the left side of his head. Neighbours gathered on the spot. They took her brother to the hospital. Thereafter her mother lodged F.I.R. against her father. Mehajabeen has stated that her statement was recorded by the police on the same day. Mehajabeen has identified the clothes which were on the person of her father when she saw him on 26.11.2008 at about 8.30 a.m. to 8.45 a.m.

8 The next witness whose evidence shows that the appellant had the motive to commit the murder of his son is PW 12 Afroz. Afroz was the son-in-law of the appellant. He was the husband of PW 4 Mehajabeen. Afroz has stated that on 2 to 3 occasions, he had seen the appellant quarreling with his wife and beating her. He had seen Mubarak intervening in the quarrel on account of which, the appellant was angry with him and stated that if he (appellant) dies, he would take Mubarak with him. Thus, the evidence of PW 1 Rabiya, PW 3 Daulatnisha, PW 4 Mehajabeen and PW 12 Afroz shows that there was a strong motive for the appellant to commit the murder of

Mubarak. In fact, the evidence of PW 1 Rabiya shows that since three months prior to the incident, the appellant was threatening that he would kill Mubarak.

9 The evidence of PW 8 Ganesh, PW 9 Utsav and PW 10 Mohiddin also connects the appellant with the crime. PW 8 Ganesh has stated that he knew Mohiddin as Mohiddin was his friend. His evidence shows that PW 9 Utsav and Mohiddin used to go to Gym. Ganesh has stated that on 26.11.2008 he and his friend Utsav went to the Gym as usual at 7 a.m. Mubarak was also member of that Gym, however, Mubarak did not come to the Gym that day, therefore, Ganesh and Utsav discussed about this fact. He and Utsav exercised upto 7.45 a.m. After that, they came out of the Gym. At that time, Utsav told him that he had left his handkerchief in the Gym, hence, he went back inside the Gym. Ganesh then went home. Thereafter, Ganesh was proceeding to the place where he was working. He had to catch train at 8.44 a.m. from Nerul to CBD. To go to the station, he was required to passby the house of Mubarak. At about 8.30 a.m. Ganesh was near the house of Mubarak. At that time, he saw father of Mubarak coming out of the house. The appellant

(father of Mubarak) had a bag on his shoulder. Ganesh noticed that there were blood stains on the shirt and pant of the appellant. As Ganesh was in a hurry as he had recently joined his job and was new to the job, he directly went to his work place. Around 12 noon, he learnt that Mubarak was murdered.

10 PW 9 Utsav has stated that he, his friend Ganesh (PW 8) and Mubarak regularly used to go Bhagwat Gym at Nerul. On 26.11.2008 at about 7.00 a.m. he and Ganesh reached the Gym, however, Mubarak did not come to the Gym. Utsav and Ganesh discussed about the absence of Mubarak. Utsav and Ganesh exercised upto 7.45 a.m. Then they came out. Ganesh and Utsav were proceeding home, however, Utsav realized that he had forgotten to pick the towel from the Gym, hence, he returned back to the Gym. Meanwhile, Ganesh proceeded ahead. On the way home, Utsav thought that he should check the whereabouts of Mubarak, hence, he went towards the house of Mubarak. At about 8 a.m., he reached the house of Mubarak. At that time, he saw Mubarak's father in the house. Utsav then did not speak to the appellant i.e. father of Mubarak and went away. At about 11.00 a.m. to 11.30 a.m., he received a phone call that Mubarak had been murdered.

11 PW 10 Mohiddin has stated that he knew Mubarak and his family. He has stated that on 26.11.2008 at about 8.30 a.m. he went to purchase bread. At that time, he saw the appellant coming hurriedly with a bag from the side of his house. At around 9.30 a.m., one person came below his house and told him that something had happened at the house of his relative, hence, he went to the house of Mubarak and saw Mubarak was lying in a pool of blood. Thus, the evidence of PW 8 Ganesh, PW 9 Utsav and PW 10 Mohiddin shows the presence of the appellant in his house at about 8 a.m. and hurriedly leaving his house at about 8.30 a.m. and at 9.15 a.m. Mubarak was found dead in the house. It is pertinent to note that nothing had been brought on record that besides the appellant, anyone else had the motive to murder Mubarak.

12 Thus, the evidence of PW 8 Ganesh and PW 4 Mehajabeen shows that about 8.30 a.m. the appellant was near his house and his pant and shirt were stained with blood. In addition, the prosecution is relying on the evidence of PW 6 Tushar. Tushar has stated that on 26.11.2008, he was called at Nerul Police Station. The clothes of the appellant were shown to Tushar. They were seized under panchnama Exh. 82. He has

identified the shirt and the pant before the Court i.e. Article 3/1 and Article 3/2 as the clothes of the appellant.

13 The evidence of PW 7 Dy. S.P. Suryawanshi shows that the seized articles which include grinding stone found at the spot and clothes of the appellant and the deceased, were sent to Chemical Analyser. The blood sample of the appellant was also sent to C.A. C.A. Report Exh.94 shows that the blood group of the appellant is "AB". C.A. Report Exh.92 shows that the grinding stone was stained with human blood of "A" group. The clothes of the deceased were stained with blood of "A" group. From this, it can safely be inferred that the blood group of the deceased was "A". The clothes of the appellant which were sent to C.A., bore human blood stains of "A" group. This circumstance further connects the appellant with the crime.

14 It is the prosecution case that the appellant assaulted his son Mubarak with a grinding stone and caused his death. This is borne out by the medical evidence. PW 5 Dr. Jain conducted the post mortem on the dead body of Mubarak. On external examination, he found the following injuries:

- “(i) Haemorrhage under scalp over left fronto parieto temporal and right occipital region adm. 15 x 12 cm. and 10 x 4 cm. respectively reddish in colour;
- (ii) Skull showed depressed fracture of left front temporal bone of size 4 x 2 cm. extending into left anterior and middle cranial fossa up to foramina magnum;
- (iii) Linear fracture of right occipital bone extending into right middle cranial fossa up to foramina magnum involving posterior cranial fossa;
- (iv) There was infiltration staining of blood seen at the fractured margin;
- (v) Meninges lacerated brain matter.”

According to Dr. Jain, the final cause of death was head injury. Such injury is possible by heavy, hard and blunt object. Dr. Jain has stated that the injury suffered by the deceased was sufficient in the ordinary course of nature to cause death. Dr. Jain has further stated that the muddemal Mortar Stone Article – A shown today in the Court is capable of causing injury suffered by the deceased.

15 On going through the record, we are of the opinion

that there is sufficient evidence to prove beyond reasonable doubt that the appellant committed the murder of his son Mubarak. Thus, we find no merit in the appeal. Appeal is dismissed.

M.S.KARNIK, J.

ACTING CHIEF JUSTICE

Kandarkar