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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1565 OF 2018
WITH
INTERIM APPLICATION NO. 981 OF 2020
IN
CRIMINAL APPEAL NO. 1565 OF 2018

Azim Mohammad Hanif Shaikh]
Age : 29 years, Residing at Kaua Market,] ...Appellant
Bebi Konkani House, Kausa,]
Mumbra, Thane.]

Versus

The State of Maharashtra] ...Respondent

Mr. Veerdhawal Deshmukh for the Appellant.
Mr. Arfan Sait, APP for Respondent – State.

CORAM : PRASANNA B. VARALE &
N. R. BORKAR, JJ.

RESERVED ON : AUGUST 08, 2021.
PRONOUNCED ON : SEPTEMBER 09, 2021.

JUDGMENT (PER PRASANNA B. VARALE, J)

1. This Criminal Appeal takes an exception to the judgment and order passed by the learned District Judge – 9 and Additional Sessions Judge, Thane in Sessions Case no. 115/2013 whereby the Appellant – Original Accused who was charged for commission of offences punishable under Sections 302 and 307 of the Indian Penal Code (for short ‘IPC’) was convicted

and awarded sentence for life imprisonment along with fine.

2. The case of prosecution as disclosed through the version of Mohd. Fayyaj Qureshi (PW 5) the complainant and injured victim is as follows:

Mohd. Fayyaj Qureshi was residing at the area namely, Kausa Market, Mumbra with his family consisting of his wife deceased Zakira and 6 children. The accused was neighbour of the complainant Mohd. Fayyaj and was also in relation to him. The accused is the son-in-law of his wife's sister. On 18.01.2012 there was some quarrel between Mohd. Fayyaj Qureshi, his wife Zakira. Brother of his wife Mohd. Farooq made an intervention and Mohd. Fayyaj Qureshi (PW 5) told him not to intervene in the dispute of husband and wife. At that time, the accused entered in the scene and carried an impression that Mohd. Fayyaj Qureshi (PW 5) and other members of family, his wife and brother-in-law were abusing him. Then Mohd. Fayyaj (PW 5) informed him that it was a dispute between himself, his wife and brother-in-law. Then accused left the spot.

On the next day i.e. 19.11.2012 at about 07.00 a.m accused reached the house of Mohd. Fayyaj (PW 5) and raised a quarrel with him on the count that Mohd. Fayyaj (PW 5) and others abused him. Accused started abusing Mohd. Fayyaj (PW 5). Brother-in-law Mohd. Farooq tried to pacify

and convince him. Accused who was armed with knife paid no heed to Mohd. Farooq, on the contrary, he laid an attack on Mohd. Farooq and assaulted Mohd. Farooq by knife on his chest and head. Then Zakira wife of Mohd. Fayyaj (PW 5) tried to intervene but the accused was not in a mood to stop and he assaulted wife of Mohd. Fayyaj (PW 5) Zakira by giving blows on her chest and stomach. When Mohd. Fayyaj (PW 5) made an attempt to intervene the accused gave blows of knife on his right hand. Then Mohd. Fayyaj (PW 5) who was having fear to his life ran away from the spot towards the police chowky and gave information in the police chowky about the incident.

Meantime, people in the locality gathered on the spot. Injured Mohd. Farooq and Zakira were removed to the hospital. In the hospital, it was informed to them that Zakira was brought dead. Mohd. Farooq and Mohd. Fayyaj were provided medical treatment. Mohd. Farooq breathed last on the same day.

3. Bajirao Barkale (PW 12) who was discharging his duty as Bit Marshal in Kaus area in the intervening night of 18.11.2012 and 19.11.2012 was approached by Mohd. Fayyaj (PW 5) who had rushed in the police chowky. Mohd. Fayyaj gave information to Bajirao Barkale (PW 12) about the attack on his wife and his brother-in-law laid by the accused. Bajirao Barkale (PW 12) forwarded information to Mumbra Police Station on phone and he

along with police constable Tayade rushed to the spot considering urgency involved in the matter. Prakash Patil (PW 14) who was attached to Mumbra police station as police inspector at the relevant time on receipt of information rushed to Chatrapati Shivaji Maharaj Hospital, Kalwa where the injured Mohd. Fayyaj was admitted.

Prakash Patil (PW 14) made an inquiry with injured Mohd. Fayyaj (PW 5) and the complaint of Mohd. Fayyaj was reduced in writing. The said complaint was carried to police station and on the basis of the complaint Crime No. 715/2012 was registered for commission of offence under Section 307 and 302 of IPC against accused. Under the direction of his senior Prakash Patil (PW 14) took the steps in the investigation such as, recording the statement of witnesses, drawing various panchnama, seizure of certain material. The seized material was then forwarded for C.A.

4. On completion of the investigation, charge-sheet came to be filed against accused for commission of offences under Section 302, 307 and 326 of IPC in the Court of JMFC. As the offences being exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions. The accused while facing the Trial took the defence of falsity of the case against him. The defence of the accused is also reflected in his statement under Section 313 of Code of Criminal Procedure. The accused also raised another

ground in defence i.e., of false implication. Learned Trial Judge, on appreciation of evidence passed the judgment and order referred to above.

5. Learned Counsel Mr. Deshmukh appointed to represent the Appellant vehemently submitted that there are certain infirmities in the prosecution evidence and these infirmities led to raise suspicion over the case of prosecution. Learned Counsel further submitted that the Court below failed to appreciate the evidence in its proper perspective and along with this ground other various grounds also raised in the Appeal challenging the judgment and order of conviction and sentence awarded to the Appellant. Mr. Deshmukh further submitted that though it is the case of prosecution that the accused used a knife for commission of offence but the recovery of the knife sought to be proved by the prosecution through panch witnesses and these panch witnesses are not supporting the case of prosecution as such, there was no material before the Court to show that the said knife was used in commission of offence. It was also submitted by learned Counsel Mr. Deshmukh that as per the evidence of the prosecution there was heated exchange of words between the complainant and the appellant accused and in this quarrel between the complainant and accused, wife of the complainant as well as brother-in-law of the complainant intervened. Thus, the submissions of learned Counsel Mr. Deshmukh is, though assuming and not admitting that

some overt-act was done by the appellant, the same was not with an intention from pre-meditation so as to cause bodily injury to deceased Zakira or deceased Mohd. Farooq. Thus, it was the submission of learned Counsel Mr. Deshmukh that the material on record was not sufficient enough to attract the provisions of Section 302 of IPC against the appellant. Mr. Deshmukh also submitted that as there are certain omissions in the version of witnesses their version ought not to have been relied on by the learned Trial Court for recording the judgment and order of conviction and sentence. Thus, learned Counsel Mr. Deshmukh prayed for allowing the appeal by setting aside the judgment and order of conviction and sentence.

6. *Per contra*, learned APP vehemently submitted that the prosecution with utmost reliable evidence in the form of injured eye witnesses coupled with medical evidence successfully established the case against the accused. It was also submitted by learned APP that the witnesses and more particularly, eye witnesses stood firm before the Court and omissions, if any, in the version of these witnesses are of minor nature and these omissions would not affect the credibility of the witnesses. Learned APP also submitted that the medical evidence fully supports the case of prosecution. It was submitted by learned APP that the fact that appellant rushed to the house of complainant armed with knife and on reaching there started abusing Mohd. Fayyaz (PW 5)

and gave knife blows to him, his wife Zakira and brother-in-law Mohd. Farooq. Thus, it is the submission of learned APP that the appellant who was an aggressor reached the spot with an intention to teach a lesson to Mohd. Fayyaj (PW 5) and his family members as such, it cannot be said that the accused had no intention to cause any physical injury either to Mohd. Fayyaj (PW 5) or to the other family members of complainant. It was also submitted by learned APP that the appellant had an grudge against the complainant and other members of his family as he was carrying an impression that on earlier day of the incident i.e. on 17.11.2012 the complainant Mohd. Fayyaj (PW 5) and his family members were abusing him. Learned APP then submitted that even though some of the panch witnesses might not have supported the case of prosecution but the recovery or seizure from the accused is duly proved by the prosecution through the investigating officer. It is then submitted by learned APP that the injured Mohd. Farooq though was provided medical treatment on his admission in the hospital but on the same day he succumbed to the severe injuries caused to him by an attack of knife laid by the appellant accused. Learned APP then submitted that the complainant Mohd. Fayyaj (PW 5) himself was also subjected to attack laid by the accused appellant and his unshaken version establishes the case of prosecution against the accused. Thus, learned APP prayed that appeal be dismissed.

7. With the assistance of both the learned Counsel, we have gone through the material brought on record.

8. It is not in dispute that in support of its case the prosecution examined 14 witnesses and out of these 14 witnesses two witnesses are eye witnesses, three witnesses are on the aspect of the medical evidence, two witnesses are hostile, and other witnesses are panch witnesses and police officials including investigating officers.

9. Sajid Shakir Ansari (PW 1) and Yunus Fakruddin Kakajwala (PW 2) are hostile witnesses. It may not be necessary for us to refer to version of these witnesses.

10. Abdul Sattar Haji Beg Khan (PW 3) is the panch witness to the seizure panchnama. This witness deposed before the Court that on 19.11.2012 PSI Bhaskar of Mumbra police station called him in the police station. Then PSI Bhaskar told him that one man and one women are murdered and police has seized their clothes and police want to prepare panchnama thereof. Then police showed him two blood stained clothes. Then police prepared the seizure panchnama and obtained his signature.

In the cross-examination, this witness stated that he is not able to read and write Marathi. PSI told him that he may not be in trouble in the case

and therefore, this witness put his signature on the panchnama. Then certain suggestions were given to this witness, those were denied.

11. Prakash Kautik More (PW 4) is the police naik attached to Mumbra police station. This witness deposed before the Court that on 19.11.2012 he was on duty at Kausa bit. In the night when he is on duty he came to know that there was one murder behind Kausa Market near public toilet. Then he rushed to the spot of incident along with HC Nelawade and PSI Bhaskar and other police staff. PSI Bhaskar handed over the dead body of one Mohammad Faruk Abdul Aziz @ Bablu. Then he took the dead body to Shivaji Hospital, Kalwa for the purpose of postmortem. Then he collected the pm report, certificate of cause of death, receipt and handed over the same to police station.

In the cross-examination, certain suggestions were given to this witness, those were denied.

12. As we have already referred the necessary details of the prosecution case reflected through the version of Mohd. Fayyaj (PW 5), it may not be necessary for us to reiterate his version before the Court. Suffice it to say that Mohd. Fayyaj (PW 5) stated in detail about the incident took on 18.11.2012 (it can safely be said that this incident a prequel or prelude to

incident in question which occurred on 17.11.2012).

In the cross-examination of this witness an attempt was made to suggest that this witness was unconscious due to assault, this suggestion was denied. The witness also admits in the cross-examination that there was no previous enmity or quarrel between him and accused. An attempt was also made to suggest that Mohd. Fayyaj (PW 5) was the aggressor, this suggestion is also flatly denied. Then suggestion given to this witness that in a quarrel between himself and Mohd. Farooq, his wife made an attempt to rescue her brother from an assault laid by this witness and in that scuffle Mohd. Farooq received injuries at the hand of this witness, this suggestion was also denied.

13. Malika Mohammad Fayyaj Qureshi (PW 6) is the daughter of complainant. She stated before the Court that at the time of the incident her maternal uncle Mohd. Farooq was residing with them. Then she stated that on 19.11.2012 at about 06.00 am she was sleeping in the house and after hearing some commotion, she came out of the house. She found that accused and her maternal uncle were scuffling with each other and the accused was possessing knife. Then accused assaulted her maternal uncle by said knife. Thereafter, her mother and father made an intervention so as to rescue her maternal uncle and the accused assaulted her mother by means of knife on her chest as well when father Mohd. Fayyaj tried to intervene, the accused assaulted him by said knife

on his hand. On raising shouts, people gathered on the spot. Then accused ran away from the spot of incident. She further stated that her father had been to the police chowky and returned with police. Then she stated that her Zakira and her maternal uncle Mohd. Farooq both of them died due to the injuries suffered by them. The clothes of the accused were shown to her in the Court and she identified the clothes. She also identified the knife.

This witness admitted in the cross-examination that she had not given any description of knife to the police. Though, there are certain omissions, these omissions are minor in nature and it can be said that they are not fatal to the case of prosecution.

14. Now we may refer to the medical evidence Dr. Dattatraya Maraskolhe (PW 7) who was attached as Casualty Medical Officer to Chatrapati Shivaji Maharaj Hospital, Kalwa, Thane at the relevant time. This witness stated before the Court that on 19.11.2012 at about 07.45 a.m. one Zakira Mohammad Qureshi Fayyaz aged 35 years old woman was brought by PC Barkule from Mumbra police station. On local examination he found stab injury on left lower chest. She was brought dead. Then he filled form of postmortem requisition. He further stated that as per history, she was carrying pregnancy of 3 months.

He further stated that at the same time one Mohammad Fayyaj

Anwar Qureshi (PW 5) was also brought to the hospital by HC Borade from Mumbra police station. On local examination, he found :

- i) *punctured wound with active bleeding side left lower chest wall measuring 3 cm muscle deep,*
- ii) *punctured wound with active bleeding right forearm, measuring 5 cm x 1 cm x muscle deep,*
- iii) *punctured wound, vascular injury with active bleeding, right forearm, measuring 5 cm x 1 cm x muscle deep.*
- iv) *incised wound near left ear external tragus cut.*

He further stated that all the injuries were fresh. First three injuries were grievous in nature. The probable cause of all injuries was sharp and pointed object. Accordingly, he issued certificate at Exh. 50.

Then he stated that on the same day at about 08.00 am one Mohammad Farooq Abdul Aziz @ Babalu was brought to the hospital by PC Barkule from Mumbra police station with alleged history of assault by known person by a sharp object. On local examination, he found following injuries :

- i) *Deep punctured wound on left axillary area measuring 3 cm x muscle deep.*
- ii) *Deep plural punctured wound on left lower chest wall measuring 3 cm x deep plural (Plural means puncturing lung plural cavity).*
- iii) *Closed lacerated wound upper deep on middle portion measuring 0.5 cm x 0.5 cm x 0.5 cm.*

He further stated that all the injuries were fresh and active bleeding was present. Nature of first two injuries was grievous. Injury no. 3 is simple. He further deposed before the Court that patient Mohd. Farooq

succumbed to his injuries at the hospital at about 09.50 on the same day.

In the cross-examination, an attempt was made to submit that the witness had not examined Mohd. Fayyaz Qureshi, this suggestion was denied. Then the witness though admitted that he has not mentioned age of the injuries, he had provided an explanation that he has stated fresh injury and fresh injury means injury within 6 hours. Then suggestion was also given to the witness that injuries sustained by the injured and deceased were not deep injuries, this suggestion is also denied.

15. Dr. Dattatraya Vishnu Kulkarni (PW 8) who was attached to Chattrapati Shivaji Maharaj Hospital, Thane at the relevant time has stated before the Court that on 19.11.2012 while he was on duty at about 01.05 pm body of Zakira Mohammad Fayyaz Anwar Qureshi was brought by police constable of Mumbra police station. Then this witness conducted the postmortem. In postmortem he found that the dead body was well nourished and cold. He found following injuries on the body of deceased :

i] Stab injury on chest left side on the lower side of the breast, just lateral on mid-clavicular line, 6.5 cm left of midline measuring 4 x 1.5 cm chest cavity deep, outer angle acute and inner acute obtuse and contused directed under posterior and medial inner side.

I found internal corresponding injury left ventricular cavity of heart and interior to right ventricular cavity of the heart, measuring 3 x 2 cm. Blood with clots 90 ml. The pericardial cavity.

- ii] Stab injury on left arm laterally upper 1/3rd measuring 2.5 cm x 1 cm, one angle acute other obtuse, direction upward and backward towards humerus bone, 7 cm deep, injury muscle of arm.*
- iii] Ablated contusion right foot near grated tow and first metacarpal dorsum of foot 2 x 1.5 cm*
- iv] Three minor abrasions on face one on forehead above left eyebrow, one lateral to it and one left side of chin, each measuring 0.5 cm in diameter.*

He further stated that the all injuries were recent antemortem. Injury no. 1 was necessarily fatal. Injury nos. 1 and 2 are caused by sharp edged weapon. He found intercostal space on the left side 5th in number perforated 4 x 1.2 cm, 200 ml blood with clots in thoracic cavity on the left side. Pericardium was perforated, left ventricle heart was perforated, right ventricle of heart was perforated. He found that the cause of death was shock and haemorrhage due to stab injury on chest involving vital organ He further stated that the blood of deceased was reported as blood group 'O'.

He further stated that on 19.11.2012 itself dead body of Mohammad Farooq Abdul Aziz @ Baal was brought for postmortem by PC Pagar from Mumbra police station with history of alleged assault on 19.11.2012 and he was under treatment of Surgery Department, Unit-I and patient died at 09.50 am on the same day.

Then he found following injuries on his body:

- i) *Surgically stitched wound on left axilla extending to left side of chest 10 cm in length, with five stitches. After removing stitches, blood was oozing from injuries. Axillary structure vessel vein was injured.*
- ii) *Stab wound on the chest on left side of chest, interior axillary line 3.5 x 1 cm, chest cavity deep, directed left to right, backwards, and downwards, six intercostal space were perforated, left side dome diaphragm perforated, posterior medially, injury to the omentum and wall of the stomach injured.*
- iii) *Scratch left side of chest, 12.5 cm x 0.1 cm vertical just left to left nipple.*

He further stated that injury no. 1 was surgically explored stab wound, on dissection structure are found to be injured as mentioned above. The injury no. 2 was caused by sharp edged weapon and sufficient to cause death. Injuries were recent antemortem. He further stated that the cause of death was haemorrhage and shock due to stab injury on chest involving vital organs and vital structures. He further stated that he had issued advance cause of death certificate of Zakira at Exh. 55. He had also issued advance cause of death certificate of deceased Mohammad Farooq at Exh. 56.

In the cross-examination, it was suggested that it was not possible for him to conduct postmortem on two bodies simultaneously, this suggestion was denied. This witness admitted that the weapon knife was not shown to

him.

16. Atish Tayade (PW 9) was attached to Mumbra police station as police constable and performing duty as bit marshal. He stated before the Court that he was present in Kausa police chowky on 19.11.2012 along with HC Barkale and at about 06.10 am while he was in police chowky one injured person namely, Mohd. Fayyaj had been to the police chowky and informed that son-in-law of his wife's sister had assaulted his wife and brother-in-law by means of knife and he also injured him. He told name of the assailant as Azim. Then HC Barkale informed the incident to the Mumbra police station. Then this witness and HC Barkale rushed to the spot of incident. After sometime PSI Bhaskar and PI Patil also reached to the spot of incident. Thereafter, injured Zakira and her injured brother-in-law Mohd. Farooq taken to Kalsekar Hospital. However, the doctors in Kalsekar Hospital refused to admit them in hospital as such, the injured were taken to Chatrapati Shivaji Maharaj Hospital, Kalwa.

In the cross-examination, nothing was elicited.

17. Dr. Milind Bansilal Patil (PW 10) who was attached as Casualty Medical Officer on 19.11.2012 in Chatrapati Shivaji Maharaj Hospital, Kalwa. He stated that one injured person Mohd. Fayyaj was brought to the hospital.

He attended initially by Dr. Maraskolhe. Subsequently, this witness also examined Mohd. Fayyaj after attending his hospital duty. At that time Mohd. Fayyaj was conscious, oriented and was fit to give statement whereas, other injured Mohd. Farooq @ Babalu was unconscious and was unable to give any statement.

18. Sahil Ismail Khan (PW 11) is the panch witness to the inquest panchnama of deceased Zakira at Exhibit 66 as well inquest panchnama of Mohd. Farooq at Exhibit 67. He is also panch to the seizure of the clothes of deceased persons at Exhibit 68 and 69 and also panch to the seizure of the clothes of injured witness at Exhibit 33 and seizure of clothes of accused at Exhibit 70.

In the cross-examination, this witness admitted that he cannot read Marathi and further stated that police had explained the contents of panchnama in Hindi to him.

19. Bajirao Barkale (PW 12) was attached to Mumbra police station as PHC at the relevant time. He stated that on 19.11.2012 when he was discharging duty as a bit marshal complainant Mohd. Faiyyaj reached to the police chowky. He had sustained bleeding injuries and he told that the accused had stabbed his wife and wife's brother as such, he immediately rushed to the

spot along with PC Tayade. On reaching to the spot, this witness found Zakira wife of the complainant and Mohd. Farooq were lying in injured condition. Then he stated that PSI Bhaskar along with other police staff removed the injured complainant, his wife and wife's brother to Kalsekar hospital and subsequently, to Civil Hospital, Kalwa.

In the cross-examination, certain suggestions were given to this witness and the witness denied those suggestions.

20. Vishwas Shankar Bhaskar (PW 13) who was attached to Mumbra police station as PSI between January, 2010 to September, 2013. This witness stated that he received a phone call from PHC Barkale of Kausa police chowky informing him about the incident. Then he along with API Manjre and other police staff rushed to the spot of incident. Then he stated about the immediate steps taken by him in the process of investigation such as, calling upon the panchas to draw various panchnama i.e. inquest panchnama, spot panchnama, seizure of clothes, etc. Then he stated that further investigation in the crime was carried by PI Patil.

In the cross-examination, certain suggestions were given to this witness, but those suggestions were denied by this witness.

21. Prakash Patil (PW 14) is the PI attached to Mumbra police

station at the relevant time. This witness stated about the part played by him and the steps taken by him in the process of investigation.

In the cross-examination, certain suggestions were given to suggest that accused had not produced the knife and the recovery shown by the investigation is doubtful one, suggestions were denied.

22. Though, it was submitted by the learned Counsel for the appellant that it is not the case of pre-meditation or an intention being carried by the appellant and the case would not fall under Section 302 of IPC, we are unable to accept the submission of learned Counsel for the Appellant.

23. The evidence on record clearly show that the Appellant on earlier day intervened in the quarrel which took place between the complainant and his wife initially and subsequently the brother-in-law, the complainant intervened but the appellant was carrying grudge that the complainant and his family was abusing him. On the next day the appellant reached to the spot armed with knife and started abusing the complainant and in spite the complainant made an attempt to pacify the appellant, the appellant paid no heed and laid an attack on the complainant. When wife of the complainant intervened to save her husband from the attack the appellant gave knife blows to her also. The appellant was not satisfied with this and laid an attack on the

brother-in-law of the complainant. The wife of the complainant though was shifted to hospital, the doctor declared her dead. Thus, it can safely be said that the death of Zakira wife of the complainant was an instantaneous death caused due to the knife blows of appellant. The medical evidence brought on record also shows that at the relevant time Zakira was carrying three months pregnancy. Brother-in-law of the complainant though was provided certain medical treatment but he also breathed last on the same day.

24. Considering the sequence of events, it can be stated that the appellant who was armed with knife by giving knife blows on the vital parts of the body of the victims, had knowledge of his act. In the present matter, apart from medical evidence, the prosecution has successfully brought the evidence in the form of version of the eye witnesses namely, the Mohd. Fayyaz (PW 5) the complainant and Malika Qureshi (PW 6) daughter of victim.

25. Considering the evidence brought on record, we are unable to accept the submissions of learned Counsel for the Appellant. Thus, in our opinion, Appeal is devoid of merit, deserves to be dismissed. Accordingly, Criminal Appeal is dismissed.

26. In view of the dismissal of the Appeal, no separate order needs to be passed in the pending Interim Application. Accordingly, Interim

Application stands disposed of.

27. We appreciate the assistance rendered by the learned Counsel Mr. Deshmukh appointed to prosecute the Appeal on behalf of the Appellant. We quantify the fees payable to him at Rs. 10,000/- (Ten Thousand only). The High Court Legal Services Committee, Mumbai is directed to pay the fees to learned Counsel Mr. Deshmukh within four weeks from today.

(N. R. BORKAR, J.)

(PRASANNA B. VARALE, J.)