

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1342 OF 2012
WITH
INTERIM APPLICATION NO. 1418 OF 2021

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Imtiyaz Intajar Khan.
Aged 28 years, Indian Inhabitant,
Occ. Service, Resident of Room No. 18,
Laxmi Building, N.M. Joshi Marg,
Bycullah(W), Mumbai 400 011.
(presently lodged at Arthur Road
Central Prison, Pune. ... Appellant.

v/s.

The State of Maharashtra
At the instance of Agripada Police Station
Vide C.R. No. 263 of 2010) ... Respondent.

Mr. Amit Mane, advocate for appellant.
Ms. M.M. Deshmukh, APP for State.

**CORAM : SMT. SADHANA S. JADHAV &
PRITHVIRAJ K. CHAVAN, JJ.**

RESERVED ON : FEBURARY 15, 2022.

PRONOUNCED ON : MARCH 16, 2022.

JUDGMENT (PER SMT. SADHANA S. JADHAV, J)

1 The appellant is convicted for the offence punishable under section 302 of the Indian Penal Code and sentenced to suffer imprisonment for life by the learned Additional Sessions Judge, Gr. Mumbai at Sewree vide Judgment and Order dated 26th November, 2012 in Sessions Case No. 285 of

2011. Hence, this appeal.

2 Such of the facts necessary for decision of this appeal are as follows:

(i) It is the case of the prosecution that one Suvarna Surve, a widow who was residing in Byculla was running a mess. She was a mother of two sons. The accused appellant also had joined her mess. She was therefore, acquainted with the appellant. Her son namely Sanket was to get married. Due to paucity of funds, she had to borrow Rs. 30,000/- from the appellant with a promise that she would return the same at the earliest. With great difficulty, she could return Rs. 10,000/-. The appellant was disturbed and insisted upon repayment remainder amount.

(ii) On 9th December, 2010, Suvarna had been to National Dairy for purchasing curd. The accused appellant upon seeing her, raised the demand for the return of remainder of the amount in a loud tone. All efforts of the deceased to pacify him had failed. People had gathered around. The accused lost his temper, abused her, drew a knife and inflicted injuries on her neck twice. When she was falling down, he mounted a blow on her gluteal region.

(iii) The people gathered around apprehended the accused. However, he threatened them by brandishing his knife. Tambit Naka Police

Chowky was in close proximity and therefore, the people informed the police. The public had pointed out the accused to the police. He was finally accosted near Kanjarwada junction. The bloodstained knife was seized from him and the accused was taken into custody.

(iv) In the meanwhile the son of the deceased namely, Aniket reached at the spot. The injured was taken to Nair Hospital. She was declared dead on admission. An eye witness namely, Ravindra Vairale lodged the report and on the basis of the same, Crime No. 263 of 2010 was registered at Agripada Police Station, Mumbai.

3 The prosecution examined as many as 14 witnesses to bring home the guilt of the accused. That implicit reliance is placed upon the evidence of P.W. 2, 5, 6, 7, 8, 9, 10 and 11.

4 P.W.2 Ravindra Vairale, has lodged the FIR, as he happened to be an eye witness to the incidence. P.W. 2 has deposed before the court that he is a journalist and social worker by profession. He is an editor of Weekly Vishwa Bahujan. On the day of the incident, at about 11.45 a.m., he had seen one lady and the accused quarreling in high pitch. The accused was insisted upon his demand to repay the amount that she had borrowed. In reaction, she

was making a frail attempt to pacify him. At that juncture, the accused had drawn the knife from his pocket and inflicted injuries on both sides of her neck. He had also mounted assault on her gluteal region. She then collapsed on the ground. The atmosphere in the area was tense as the shopkeepers had pulled down the shutters. The accused was trying to flee. The public tried to chase him, but he was brandishing his knife and threatening the public. Someone had called upon the police. The police reached the spot immediately and arrested the accused. P.W. 2 with the help of Mohd. Shariff admitted the deceased in Nair Hospital. She was dead.

5 It is admitted in the cross-examination that on the next day i.e. 10/12/2010, P.W. 2 was summoned by the police. His statement was recorded by PSI Chavan. Certain trifling omissions are brought on record. An enquiry was made with him by the police, but statement was not recorded on 9/12/2010. It is admitted that he had not given any history about the incidence to the medical officer. P.W. 2 had shown the spot of incidence to the police during the period 1 p.m. to 1.30 p.m.. The FIR is at Exh. 18.

6 Another eye witness is P.W. 5 Mohd. Sharif Mohd. Salim Shaikh who was acquainted to P.W. 2. The evidence of P.W. 5 would show his presence at the spot when the deceased had sustained serious injuries at the

hands of the accused. The evidence of P.W. 5 is consistent with the evidence of P.W. 2. He has also reiterated the background of the incident and the manner in which the injured had sustained injuries at the hands of the accused who was arrested within no time. P.W. 5 had assisted P.W. 2 to take the injured to the hospital. They were not able to give the identity of the deceased. The son of the deceased had reached the hospital and identified his mother. The taxi in which the injured was taken to Nair Hospital was owned by P.W. 5 but was being plied by another driver. The son of the deceased had also accompanied P.W. 5 to the hospital. According to him, P.W. 2 had not accompanied them in the taxi, but had reached hospital soon after them. The accused was arrested at a distance of 15 to 16 ft. away from the spot at which the incident had occurred. He could not disclose the name of the accused to the doctor as he did not know the accused. An oral enquiry was made by the police. The clothes of the son of the deceased was stained with blood. An omission is elicited in the cross-examination to the limited extent that there is no mention of the accused having drawn the knife from backside. He had denied that P.W. 2, Yakub and himself had hired another taxi. Hence, the said contention in the statement under section 161 of Code of Criminal Procedure, 1973 is marked as contradiction i.e. "A".

7 P.W. 6 Yakub Shaikh also happens to be an eye witness. He was

the owner of hotel “Lakhpati”. He has seen P.W. 2 and 5 talking with each other and therefore, he joined them. His substantive evidence corroborates the evidence of P.W. 2 and 5.

8 P.W.7 Abdul Khan was serving in National Dairy and Sweets Shop. One Mohd. Ali Shaikh is the owner of the said shop. He was residing on the mezzanine floor of the said shop. On 9/12/2010 Suvarna had visited his shop for purchasing curd. The accused reached the shop and pressed his demand for refund of money. The attempt of Suvarna to pacify failed when the accused drew knife and inflicted injuries on her. He was not knowing the name of the accused on the day of the incident, but had learnt about it from general public. Hence, his evidence corroborates the evidence of P.W. 2 and P.W. 5. Some omissions are brought on record, such as, that the accused had reached the shop and demanded money and that the deceased was pacifying him. He was acquainted with the deceased for almost 10 to 15 years. He was sent to the police station by his owner, since the incidence had occurred in front of his shop. He was acquainted with the witnesses.

9 P.W. 8 Aniket Surve happens to be the son of the deceased. He was acquainted with the accused, since the accused used to have lunch or dinner in the mess since 3 years. He had learnt from his mother that she had

borrowed Rs. 30,000/- from the accused at the time of marriage of Sanket and that she was able to return only Rs. 10,000/-. She had requested both the sons that as far as possible they should repay the remainder amount to the accused as early as possible since, she had closed the mess after the marriage of Sanket.

10 As far as the incident is concerned, P.W. 8 has stated that on 9/12/2010 at about 12 noon he was at home when his mother had been to National Dairy for buying curd. Within 10 to 15 minutes someone from the building informed him that his mother is lying in a pool of blood in front of National Dairy and therefore, he rushed to the spot to verify the information. Upon enquiry from the public, he had learnt that the accused had assaulted his mother. The public informed him that she was taken to the hospital and therefore, he rushed to the hospital immediately. P.W. 8 has identified the wearing apparels, footwear and the bloodstained handkerchief of her mother. It is elicited in the cross-examination that he had not secured the OPD papers from the hospital. His brother Sanket has also reached the hospital. He could not recollect the name of the person, who informed him about his mother lying in pool of blood in front of National Dairy or about the admission of his mother in Nair Hospital.

11 P.W.9 Dr. Shailesh Mohite had performed autopsy on the dead body of Suvarna Surve on 10/12/2010 with the assistance of Dr. Pawan Sable and Dr. Shivkumar Kolhe. The cause of death of Suvarna was “shock and haemorrhage due to cut throat injury (unnatural)”. The post mortem notes are at Exh. 34. It is admitted in the cross-examination that the weapon of assault was never shown to him. That injury nos. 1, 2 and 4 mentioned in column no. 17 are incised wound whereas injury no. 3 is a stab wound. That the injury are caused by a single sharp edged weapon. The injuries nos. 1, 2, 3 and 4 are different injuries. P.W.9 was confronted with the knife in the course of his cross-examination and he has stated categorically that it is a single edged weapon.

12 P.W. 10 Suresh Kolhe was attached to Agripada Police Station and was posted at Beat No. 1. At about 12 noon, he had noticed a mob of public rushing towards Beat No. 1. At that time, he was chatting with ASI Kadam, Head Constable Sarate and other police present in the police station. They saw a person running from National Dairy towards Kanjarwada and he was brandishing a sharp weapon. An unknown person from the mob had informed that the said person had stabbed one lady and therefore, they were chasing him. With the help of the public, the assailant was apprehended at Kanjarwada junction. Upon instruction by API Gondhale, ASI Kadam had

visited the spot of incident and confirm the incident. P.W. 10 identified the accused before the court as the person who was apprehended by the police at Kanjarwada. The statement of P.W. 10 was recorded on 13/12/2010.

13 P.W.11 Savailal Chavan is the investigating officer who had also recorded the first information report as narrated by P.W. 2. He has proved the first information report, which is at Exh. 18.

14 P.W. 12 to 14 are part of investigation and they have all corroborated with the evidence of P.W. 9, 10 and 11.

15 The learned Counsel for the appellant submits that the appellant has been falsely implicated at the behest of the son of the deceased only because the deceased and her sons had no intention to repay the amount. In the alternative, it is submitted that the accused had no intention to cause homicidal death of the deceased. The incident had occurred on the spur of the moment and hence, the offence falls under section 300 clause thirdly. That the accused has undergone almost 12 years of incarceration and therefore, the sentence already undergone would serve the ends of justice.

16 Per contra, learned APP has submitted that all three eye witnesses to the incidence are consistent. The accused was apprehended by

the police on the spot and a bloodstained knife was recovered from him soon after the incident. The members of the public had chased him after having seen that he had stabbed a woman.

17 This is a case of direct evidence. The eyewitnesses have not been shattered by way of cross-examination. The submission that the incident has occurred on the spur of the moment cannot be comprehended in any manner for the simple reason that the accused was in fact carrying a sharp edged weapon at the time of incident. The accused was acquainted with the deceased for 3 years prior to the incident. The demand for repayment could have been pressed into service even in her house. However, the accused had chosen a public place to raise the demand. The witnesses have proved that she was making the best of attempts to pacify the accused. She had no intention to cheat the accused. In fact, she had requested her sons to repay the amount at the earliest as far as possible. The accused had first humiliated the deceased in a public place by abusing her and soon thereafter had inflicted blows upon her with the sharp edged weapon.

18 The medical evidence corroborates the evidence of the eye witnesses. This is not a case of single injury. The accused had inflicted the injury on both side of the neck. The injury on the gluteal region was the only

simple injury that was not fatal. That column no. 17 of the post mortem notes are as follows :

(1) An oblique, incised wound of size 14 cm x 3 cm. x ant. wall of oesophagus was present over right anterolateral aspect of neck. The injury extended from angle of mandible on right side, crossing the midline obliquely at level of thyroid cartilage and extending upto 4 cm. on the left of midline. In the midline the injury was 8 cm. above supra-sternal notch and 7 cm. below symphysis menti. Two serrations were seen as lower border of the injury on right side, 2 cm. and 4 cm. away from the right end. The margins were clear cut. The underlying subcutaneous tissue, strap muscles, blood vessels, trachea and anterior wall of oesophagus was cut in full thickness. There was e/o extravasation in and around the injury, reddish coloured.

(2) An oblique, incised wound of size 12 cm. x 1 cm. muscle deep seen on left anterolateral and posterior aspect of neck. The injury extended 5 cm. away from left of midline and passing obliquely backwards upwards and posterity upto hairline and upto 5 cm. away from left of midline on nape of neck. The anterior end of the injury was above the level of medial end of injury No. 1 and 5 cm. below the border of mandible, passed through a point 3 cm. below left angle of mandible. The margins were clear cut and regular. The underlying subcutaneous tissue, muscles, vessels, were sharply cut with extravasation of blood in and around the wound, reddish coloured.

(3) Stab wound of size 3.5 cm. x 0.3 cm. x 9 cm. was present over upper inner quadrant of right buttock. The injury was oblique with the medial end lower than the lateral end. The medial end was 8 cm. from midline and an acute angle whereas the lateral end was obtuse angle. The injury was directed upwards, forwards and medially. The underlying muscles were clear cut.

(4) Two injuries seen on left thumb, Palmer aspect, one was vertically directed at medial border of size 1.5 x 0.3 cm. x 0.5 cm. whereas the other IW was 'L' shaped on lateral border, a flap was raised of size 2 cm. x 0.3 cm. x 1 cm. The wound was reddish and showed e/o. Bleeding in and around the injury.

The internal injuries in column No. 20 of the post mortem notes are corresponding to the injuries in column no. 17 and the evidence of the eye witnesses is corroborating the medical evidence. The prosecution has proved the guilt of the accused beyond reasonable doubt and hence, there is no reason to interfere with the judgment of the trial court. Hence, following order is passed :

ORDER

- (I) The Appeal is dismissed.
- (II) The conviction and sentence imposed upon the appellant by the learned Additional Sessions Judge, Gr. Mumbai at Sewree vide Judgment and

Order dated 26th November, 2012 in Sessions Case No. 285 of 2011 is hereby confirmed.

(III) The Appeal is disposed of accordingly.

(IV) In view of disposal of the appeal, nothing survives in the interim application No. 1418 of 2021. The same is also disposed of accordingly.

(PRITHVIRAJ K. CHAVAN, J)

(SMT. SADHANA S. JADHAV, J)