

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

CRIMINAL APPEAL NO.890 OF 2013

Irfan Lalabhai Shikalkar
Residing at Sutar Galli, Karmala,
District Solapur
At present Yerwada Central Prison,
Pune

.... Appellant
(Orig. Accused)

versus

The State of Maharashtra
(At the instance of Karmala
Police Station, District Solapur)

... Respondent

.....

- Mr. R. D. Suryawanshi, Advocate for Appellant .
- Ms. G. P. Mulekar, APP for State/Respondent.

**CORAM : S. S. SHINDE &
SARANG V. KOTWAL, JJ.**

DATE : 30th MARCH, 2022

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

1. The Appellant has challenged the Judgment and Order dated 09/05/2013 passed by the Sessions Judge, Solapur, in Sessions Case No.156 of 2012. By the impugned judgment and order the Appellant was convicted for the offence punishable u/s

Digitally
signed by
MANUSHREE
V NESARIKAR
Date:
2022.04.05
11:06:40
+0530

Nesarikar

324 and 506 of the Indian Penal Code and was sentenced to suffer rigorous imprisonment for one year and to pay a fine of Rs.500/-, in default to suffer rigorous imprisonment for three months. The Appellant was also convicted for commission of 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/-, in default to suffer rigorous imprisonment for six months.

2. The Appellant was acquitted from the charges of commission of offence punishable u/s 307 of the Indian Penal Code. All the sentences were directed to run concurrently. The Appellant was given set off u/s 438 of Cr.PC. for the period for which he was in jail.
3. Heard Mr. R. D. Suryawanshi, learned counsel for the Appellant and Ms. G. P. Mulekar, learned APP for the State.
4. The prosecution case is about the incident dated 13/04/2012 in the morning at about 07.30 a.m. In the incident, the Appellant caused assault with knife on his neighbours and committed murder of his wife. The FIR was lodged by one of the

injured witnesses. The investigation was carried out and the charge-sheet was filed against the Appellant. The case was committed to the Court of Sessions.

5. During trial, the prosecution has examined 10 witnesses. Three injured eyewitnesses are important witnesses in this case. There is medical evidence in the form of post-mortem notes and injury certificates. The panchas for spot panchanama and arrest panchanama were examined.
6. Learned counsel for the Appellant submitted that there are indications that the Appellant might not be in his senses when he committed this offence. He further submitted that there is a strong possibility that the offence may not fall within the definition of murder as defined u/s 300 of IPC. It can be a case of a lesser offence because the prosecution has not brought out any motive for the Appellant to commit murder of the deceased and to assault the neighbours.
7. Learned APP on the other hand relied on the evidence of injured eyewitnesses. She submitted that the manner in which the

deceased was assaulted, leaves no doubt that it is a case of murder and cannot be described as any other lesser offence.

8. We have considered these submissions. PW.1 Sadashiv Vishwambhar Dongare was the Pancha for the inquest panchanama. The injuries of the deceased are described in detail in the post-mortem notes. From the injuries on the dead body, it is clearly a case of homicidal death.

9. PW.2 Sandip Pradip Chung, was an injured eyewitness. His evidence is important. He has stated that he was residing at Sutar lane, Karmala. His house was two storied. The Appellant was residing in front of his house. He has stated that there used to be quarrels between the Appellant and his wife. PW.2 was residing with his family as well as his paternal aunt Jaya Chung and his cousin Kiran Chung, Jaya's daughter. The incident had taken place on 13/04/2012 at about 08.00 a.m. to 08.30 a.m. He had returned back to his house from his hotel at about 08.00 a.m. His mother Neeta and aunt Jaya were in the house on the first

floor. He had gone to the bathroom on the ground floor. He heard shouts from Jaya and Kiran. He ran to the first floor. He saw that Nasrin, wife of the Appellant, was trying to hide herself behind Jaya and the Appellant was trying to assault Nasrin with the knife. Jaya was trying to save her. The Appellant assaulted Jaya. When Kiran tried to intervene, she was also assaulted by the Appellant. P.W.2 tried to save them, but he was also assaulted by the Appellant. All of them were assaulted on vital parts. 3 to 4 neighbours namely Dattatraya Mandaka, Dattatraya Bole and Vijendra Salunkhe came there on hearing the shouts. The Appellant threatened them. P.W.2 then ran towards the terrace of his house and came down by another staircase. He saw that Nasrin was going towards her house. The Appellant followed her. The neighbours took P.W.2 and other injured to Jawalekar hospital. Then they were shifted to cottage hospital at Karmala and then they were shifted to Chende hospital at Ahmednagar. He narrated the incident to the police. His statement was recorded and was treated as the FIR. It is produced on record at Ex.17. Subsequently, he was shifted to Ruby hospital. He was treated there for about 10

to 12 days. His statement was also recorded u/s 164 of Cr.P.C. He came to know that Nasrin was murdered by the Appellant. He identified the articles in the Court.

10. In the cross-examination he has stated that there were 10-15 persons at the spot. He could not explain as to why the FIR did not mention that when Nasrin was going towards her house, the Appellant followed her. One suggestion was given to P.W.2 that the Appellant was mentally disoriented at the time of incident. P.W.2 denied this suggestion. He was also suggested that the Appellant himself was beaten. That suggestion was also denied.

11. P.W.3 Jaya Pitambar Chung has narrated the incident in exactly the same manner as was described by P.W.2. Same suggestions were put to her which she denied. P.W.4 Akshara @ Kiran Pitambar Chung was another injured witness. She has also deposed in the same manner as deposed by P.W.2 and P.W.3. There was hardly any discrepancy in their evidence.

12. P.W.5 Jaywant @ Dattta Namdeo Madake was another

neighbour who had gone to the spot after hearing the commotion. He has stated that he and others saw that the Appellant was assaulting Kiran, Sandip, Jaya. They caught the Appellant. But the Appellant bit Vijendra Salunkhe on his right shoulder. The Appellant went to this house. P.W.5 and others heard shouts of the Appellant's wife from the house. P.W.5 and others carried the injured to the hospital. In the cross-examination he has stated that he did not inform the police about the incident. He denied the suggestion that the Appellant was mentally disoriented.

13. P.W.6 Tukaram Sopan Sorate was the pancha to the spot panchanama, which was carried out on 13/04/2012. He was also examined for recovery of the knife at the instance of the Appellant. The knife was recovered from the Appellant's house. He had concealed the knife behind the cupboard. The spot panchanama was carried out on 13/04/2012 between 05.00 to 06.10 p.m. The blood from the spot was collected. P.W.2's banian was collected at the spot. P.W.7 Rajendra Veer was the pancha for arrest panchanama.

14. P.W.8 Dr. Sandip Patil was the Medical Officer as

mentioned earlier. He had described injuries suffered by the three injured namely Sandip, Jaya and Kiran as follows;

Sandip had suffered -

- (i) Sharp incised wound over right side lower chest near midline measuring 4 cm x 2 cm into cavity.
- (ii) Sharp incised wound over upper chest midline measuring 1.5 cm x 1.5 cm bone deep.
- (iii) Abrasion over right shoulder measuring 3 cm x 1 cm.
- (iv) Abrasion over right anterior aspect of neck & left anterior measuring 2 cm x 2 cm.
- (v) Linear abrasion over left side to left eye measuring 2 cm x 2 cm.

Jaya had suffered -

- (i) Sharp incised wound over left side chest medial to left shoulder measuring 6 cm x 2 cm into muscle deep.
- (ii) Sharp incised wound over left forearm middle 1/3 flexor & ulner aspect measuring 4 cm x 2 cm muscle deep.
- (iii) Sharp incised wound over left forearm middle 1/3 flexor & ulner aspect measuring 4 cm x 2 cm muscle deep.

- (iv) Sharp incised wound over left forearm middle 1/3 flexor & ulner aspect measuring 4 cm x 2 cm muscle deep.
- (v) Sharp incised wound over left breast lateral aspect measuring 4 cm x 2 cm cavity deep.
- (vi) Sharp incised wound below left clavicle measuring 3 cm x 2 cm cavity deep.
- (vii) Sharp incised wound below right breast measuring 4 cm x 2 cm into cavity deep.
- (viii) Sharp incised wound over left axillary area measuring 2 cm x 2 cm x 0.5 cm.

Kiran suffered -:

- (i) Incised wound sharp over inter scapular region measuring 4 cm x 1 cm cavity deep.
- (ii) Sharp incised wound over inter scapular region measuring 2 cm x 1 cm x 0.5 cm.
- (iii) Sharp incised wound over back and left shoulder measuring 5 cm x 1 cm muscle deep.
- (iv) Sharp incised wound over left breast measuring 6 cm x 1 cm cavity deep.
- (v) Sharp incised wound over left breast measuring 3 cm x 1 cm x 0.5 cm.
- (vi) Sharp incised wound over left arm measuring 1 cm x 1 cm x 0.5 cm.

- (vii) Sharp incised wound over left arm measuring 1.5 cm x 1 cm x 1 cm.

15. He has stated that all the injuries were simple in nature.

He has also examined the Appellant, who had suffered CLW over right palm measuring 5 cm x 0.5 cm and CLW over little right finger measuring 0.5 cm x 0.5 cm x 0.5 cm.

16. The Medical Officer had conducted the post-mortem examination of the deceased. He had found following injuries on the dead body.

- (i) Abrasion on right side of neck obliquely bright redish-brown colour measuring $\frac{1}{2}$ cm x $\frac{1}{4}$ cm x 1 cm x $\frac{1}{2}$ cm, $\frac{1}{4}$ cm x $\frac{1}{2}$ cm and $\frac{1}{4}$ cm x $\frac{1}{4}$ cm on central part of the neck.
- (ii) Contusion 2 cm x 1 cm red colour above thyroid cartilage with echycosis.
- (iii) abrasion mark size 5 cm x 3 cm below left angle of mandible of left lateral side of neck oblique mark & bright red-brown colour.
- (iv) Abrasion $\frac{1}{2}$ cm x $\frac{1}{2}$ cm on left upper eyelid.

All the injuries were ante-mortem injuries.

The cause of death was mentioned as 'death due to shock due to asphyxia due to compression of neck'.

17. PW.9 Avinash Patil had carried the articles for C.A. examination.

PW.10 PI Laxman Mahadev Borate, was the Investigating Officer. He has stated that the FIR was lodged on 13/04/2012. Thereafter the spot panchanama was carried out at about 10.00 a.m. The Appellant was arrested. He was medically examined. He collected medical certificates of the injured persons.

18. Apart from that, the prosecution has produced C.A. certificates on record. On most of the articles the blood group was inconclusive. Even on the knife human blood was detected but the blood group was inconclusive.

19. Thus, the evidence produced by the prosecution against the Appellant consists of three injured witnesses. All these

witnesses are natural witnesses. The injured eyewitnesses were staying next to the house of the deceased and the Appellant. There is absolutely nothing in their evidence including their cross-examination creating doubt in their version. They have described the incident consistently and in detail. All of them had tried to save Nasrin, but the Appellant went on assaulting all these witnesses with knife one after the other. Their evidence is supported by the medical evidence. Though the Medical Officer has opined that their injuries were simple in nature, it can be seen that they are inflicted on vital parts and some injuries were of some depth. However, the Appellant is convicted only u/s 324 of IPC for causing those injuries. Acquittal u/s 307 of IPC is not challenged by the State.

20. As far as murder of deceased is concerned, there is sufficiently strong evidence against the Appellant. The evidence shows that, in the first part of the incident the Appellant had chased his wife Nasrin to the house of the witnesses P.W.2, P.W.3 and P.W.4. He had tried to assault her with a knife. However, in the

incident, these witnesses suffered knife injuries on their person. Thereafter Nasrin ran back to her house followed by the Appellant. That part of the incident is sufficiently brought on record. Immediately thereafter she was assaulted to death. Her neck was pressed. The cause of death is mentioned earlier. This chain of events and the occurrence one after the other immediately leaves no manner of doubt to conclude that the Appellant has committed this offence. There is hardly any infirmity in the deposition of the witnesses. The other neighbour P.W.5 has sufficiently corroborated the version of the injured eyewitnesses. As mentioned earlier, all of them are natural witnesses. P.W.5 had taken the injured witnesses to the hospital. The FIR is lodged at about 03.15 p.m. at the hospital when the P.W.2 had given his statement. During reasonable time the investigation was carried out. The recovery of knife at the instance of the Appellant is another circumstance against him.

21. We are unable to accept the submission that the offence may not fall within the definition of murder u/s 300 of the IPC. The Appellant had chased his wife to the next house with knife. He

had injured three inmates of the house and came back to his house chasing his wife to commit murder of his wife. It was for him to explain under what circumstances the incident started. Even otherwise the circumstances clearly show that the Appellant had committed murder with preparation, premeditation and with intention. There is no circumstance to indicate that the incident had occurred on the spur of moment or had occurred suddenly. The Appellant on his part has not discharged the burden. Therefore we are unable to hold that the offence would not be murder, but would be of a lesser degree. The theory that the Appellant was not in his senses; is not pursued besides giving suggestions. No circumstances in favour of this theory is brought on record.

22. Considering all these aspects, the Appeal deserves to be dismissed, and is dismissed accordingly.

(SARANG V. KOTWAL, J.)

(S. S. SHINDE, J.)