

RMA

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 943 OF 2015

Usman @ Abdul Gadi Shaikh

Age: 37 years, Residing at: Mhada chawl

No.45, Room No.5, Kokariya Agar,

Koliwada, Mumbai-400037 and

Presently in Nashik Road Central prison,

Nashik

Appellant

.. (Orig. Accused)

Versus

State of Maharashtra

Respondent

.. (Orig. Complainant)

Ms. Sonia Miskin, Advocate appointed for Appellant

Mr. Ajay Patil, APP for State

**CORAM : A.S. GADKARI &
MILIND N. JADHAV, JJ.**

DATE : 26th August, 2022.

JUDGMENT (PER : MILIND N. JADHAV, J.)

1. This Appeal questions legality of Judgment and Order dated 01.08.2008 passed by learned Additional Sessions Judge, Greater Mumbai at Sewree in Sessions Case No. 465 of 2007 convicting Appellant (original accused) under Section 235(2) of the Code of Criminal Procedure (for short “**Cr.P.C.**”) for offence punishable under Section 302 Indian Penal Code, 1860 (for short “**IPC**”) and sentenced to suffer rigorous imprisonment for life and to pay fine of Rs. 2000/- and in default thereof, suffer further rigorous imprisonment for one year.

2. Prosecution case is based upon direct eye witness evidence of PW-1, PW-5, PW-6 and PW-8. PW-1, Amina is the first informant and friend of deceased Reshma; they both were sitting on the ota in the open space in front of their building when at about 7:00 – 7:15 p.m., Reshma's estranged husband(Appellant) came to meet her and attacked her furiously with sickle; PW-5, PW-6 and PW-8 are neighbours residing in the same building who witnessed the assault by Appellant on Reshma at the time of incident; PW-8 informed police authorities immediately on phone about the incident.

3. Shorn of unnecessary details, facts of the prosecution case which emerge from record are as under:-

3.1. Reshma was married to Appellant for 6 years and they had 3 daughters; due to some matrimonial discord, Reshma resided with her mother at her parental house at Building No. 6, MHADA Colony, Vashi Naka, Chembur Labour Camp (place of incident) where appellant used to intermittently visit her.

3.2. On 11.03.2007 at about 7:15 p.m. in the evening Reshma was talking to PW-1 in front of their building, when appellant came there and asked Reshma to return back to their matrimonial house; out of fear Reshma said that she will consult her mother and let him know, but Appellant sat next to her, removed the weapon- sattur (sickle) which was hidden in his waist and assaulted Reshma furiously

with it on her forehead, face and neck; Reshma sustained grievous injuries and fell to the ground; PW-1 raised a shout; several people gathered at the spot of incident and apprehended Appellant and tied his hands with PW-1's dupatta when he attempted to run away; weapon used by Appellant fell at the spot of incident.

3.3. PW-13, PSI and PW-14, PI both police officers rushed to the spot of incident on receiving phone call from PW-8 and found Reshma lying dead; PW-1's statement was recorded and treated as F.I.R. / C.R. No. 45/2007(Exh.59) was registered; weapon was recovered and seized from the spot of incident vide spot panchnama (Exh. 17); inquest panchnama (Exh. 19) was prepared; Appellant was referred for medical examination; Reshma's blood stained clothes were seized under panchanama (Exh.61 and Exh.62), so also clothes worn by Appellant were seized under seizure panchanama (Exh.15). All seized articles were sent for CA analysis and CA Reports were obtained and produced in evidence (Exh. 68 and Exh. 69); weapon used by Appellant was identified by servant working in PW-10's meat shop from where it was stolen by Appellant two hours before the incident; statements of witnesses were recorded, reports were received and after completing investigation PW-14 – Investigating Officer (I.O.) filed charge-sheet against Appellant before the Metropolitan Magistrate, 11th Court, Kurla, Mumbai; Learned Magistrate committed

the case to the Sessions Court as offence under Section 302 is exclusively triable by the Court of Sessions.

3.4. Charge was framed for offence punishable under Section 302 IPC against Appellant; it was read out and explained to him in vernacular; he pleaded not guilty to the charge and claimed to be tried, his defence being that of total denial and implication in a false case.

3.5. In order to substantiate case against Appellant, prosecution examined 14 witness and relied upon oral and documentary evidence namely eyewitness account of PW-1, PW-5, PW-6 and PW-8; Arrest panchanama dated 11.03.2007; Inquest panchanama; Seizure panchanama of weapon used by Appellant dated 12.03.2007; seizure panchanama of clothes and articles of Reshma dated 12.03.2007 (Exhs. 23 and 24); PM report vide (Exh.51); CA reports identifying blood stains of deceased Reshma on the clothes of Appellant respectively.

3.6. To bring home guilt of Appellant, prosecution examined 14 witnesses; out of 14 witnesses, PW-1, PW-5, PW-6, PW-8 are eye witnesses to the incident. PW-3 and PW-4 are pancha witnesses to the recovery and seizure of articles belonging to Reshma, seizure of weapon used by appellant, spot panchanama and inquest panchanama. PW-9 is doctor who examined Reshma at the spot of

incident immediately after she was assaulted by Appellant. PW-10 is servant working in the butcher's shop from where Appellant had stolen the weapon used for assault on Reshma; PW-12 is doctor who conducted post mortem of Reshma's dead body whereas, PW-11, PW-13 and PW-14 are police officers involved in investigation.

4. PW-1, PW-5, PW-6 and PW-8 are independent eyewitnesses and are not related to deceased Reshma. As stated, the prosecution case is based on ocular evidence of the four witnesses.

5. PW-1 Amina, friend of deceased Reshma in her evidence has categorically deposed that incident took place at about 7:00 p.m. in front of the gate of building No.6 where she and Reshma were sitting on ota and talking; at that time Appellant arrived and asked Reshma as to when she will return to her matrimonial home, upon which Reshma answered that she would take permission of her mother and thereafter decide; on hearing this Appellant sat next to her, removed the weapon (sattur) which was hidden near his waist and inflicted a blow of the weapon with force on her forehead; Reshma was giddy and fell to the ground upon which Appellant assaulted Reshma with the weapon all over her face and back of neck in her presence; she has further deposed that at that time, 10 to 15 persons assembled at the spot of incident and one of them caught hold of Appellant upon which the weapon fell to the ground from his hand and another person took

PW-1's dupatta and tied both hands of appellant so prevent him from running away. PW-1 has deposed that Reshma was declared dead by PW-9, the doctor having his dispensary in building No. 6 itself who came to the spot and examined Reshma immediately after the incident. In cross-examination, PW-1 has deposed that she was acquainted with Reshma and her husband i.e. Appellant prior to the incident; that she knew the Appellant. This evidence given by PW-1 stands fully corroborated by the deposition of PW-5, PW-6, PW-8 about having witnessed the assault on Reshma.

6. PW-5 has deposed that on 11/3/2007 at about 7:15 to 7:30 p.m. he saw Appellant inflicting blow with weapon on Reshma and caused a bleeding injury to her. PW-6 in has deposed that about 7:15 p.m. he was doing zarikam when he heard the shout "Mar Raha Hai. Gani Reshma ko Mar Raha Hai"; PW-6 immediately peeked through the window of his room and saw Appellant assaulting Reshma with weapon which looked like a butcher's knife. PW-8 in his evidence has deposed that at about 7:15 p.m. he came to the ground floor of the building from his room after finishing his zarikam work and was sitting in the office of Jhopadpatti Police Panchayat Samiti nearby when he heard screams, ' maar dala maar dala'; he along with others rushed out of office and saw Appellant inflicting blows with sickle (weapon) on Reshma; and thereafter several persons gathered at the

spot and apprehended Appellant immediately. The deposition of these three eye witnesses supports and corroborates the direct ocular evidence of PW-1.

7. It is seen that in the present case, PW-10, servant working in the shop of Aamanulla Mohammad Barbar Khan (butcher) has deposed that at about 5:30 p.m. one person posing as customer entered the shop and ran away with the sickle (butcher's knife) from the shop; that he was chased but he slipped away and ran across the Railway line; that he has identified Article No.1 i.e., the weapon used by appellant to be the same sickle (butcher's knife) which was stolen by the person from the shop.

8. Medical evidence in the present case fully supports and corroborates the eye witness account of prosecution witnesses. PW-12, Dr. Sunil Jawle doctor on duty at Rajawadi Hospital conducted postmortem on the dead body of Reshma. In his evidence he has deposed that there were grievous injuries on the body of Reshma; that all injuries showed clean cut margins which were reddish oedematous and there were fractures of both heads of humerie. In the PM Report (Exh.51) following injuries were noticed on the body of Reshma :-

"A. External Injuries:-

- (i) Incised wound right parietal 9 cm 2 cm 1 cm horizontal;

- (ii) A chop wound – incised wound with minimum contusion at edges starts at posterior part of neck, travels laterally crossing ear-lobule and ends at zygomatic-arch right side - 17 cm X 4 cm X 5 cm, neck muscle and vessels and lateral vertebral arch and body cut, contused oedematous, reddish;
- (iii) Incised wound right shoulder upper and outer aspect, semi circular, 11 cm X 5 cm X 5 cm, damaged head of humerus and surrounding ligaments and muscles, vessels;
- (iv) Incised wound posterior right forearm middle;
- (v) Incised wound left forearm postero-medial aspect 4 cm X 1 cm X 1 cm and another above it, 2 cm X 1 cm X 1 cm, clean cut margins / Oedematous;
- (vi) Incised wound starting from left frontal (near middle) crossing upper eyebrow, left lower eyelid, ends at cheek 14 cm X 1 cm X 1 cm;
- (vii) Incised wound at left shoulder 6 cm X 2 cm X 1 cm horizontal with damage to head cartilage and structures nearby;
- (viii) Incised wound left temporal horizontal 7 cm X 1 cm X 1 cm;

B. Internal Injuries:-

- (i) Sub-galleal contusion around injury No. 11;
- (ii) that outer table of skull was seen fractured corresponding to injury No. 17 with evidence of infiltration staining;

- (iii) All organs were pale and large vessels of the neck of right side seen cut;
- (iv) In spine, spinous process of C-2-3 and lateral spinal muscles seen cut;
- (v) Lateral spinal muscles with vessels of right neck seen cut.

9. PW-12 opined that the external and internal injuries on Reshma were sufficient to cause death of any person in the ordinary course of nature and the injuries were possible with the weapon (Article No.1) shown to him during his deposition. PM report certified the probable cause of death of Reshma as a result of shock due to partial decapitation with multiple injuries.

10. On minute perusal of evidence on record it is seen that ocular evidence of the four eyewitnesses is fully supported by recovery evidence and corroborated by medical evidence. CA report (Exh. 68) reveals blood stains of blood group 'O' positive found on the jeans pant of appellant which was seized; that blood group of Appellant was 'B' positive whereas blood group of deceased Reshma was 'O' positive and thus this strong additional circumstance goes against Appellant and confirms his presence at the spot of incident.

11. In the present case, incident of murder of Reshma took place in a public place in front of building No. 6 at around 7:15 p.m. in the presence of several persons. Eyewitnesses to the murder examined by

prosecution have given a clear account as to what happened before their eyes. Eyewitnesses undoubtedly viewed the entire incident from close range; in fact PW-1 complainant was sitting right next to Reshma when incident occurred. The statements of prosecution witnesses recorded during investigation were more or less reiterated during the trial; in fact on carefully perusing evidence of four eye witnesses, it is seen that there is hardly any contradiction or deviation of their narration of the incident of murder. Further it is seen that the main substance of the story narrated by eyewitnesses remains unshaken in cross-examination.

12. The evidence adduced by eye witnesses namely PW-1, PW-5, PW-6, PW-8 do not suffer from any inconsistency or improbability to hold that the prosecution's case is doubtful or the veracity of evidence given by these eyewitnesses is doubtful. There is no material placed on record warranting a finding that these eye witnesses had any motive to falsely implicate the Appellant on a charge of murder. Admittedly the murder had taken place in a place in front of the building and was witness by several persons at 7:15 p.m. in the evening. In our considered opinion the evidence of these eye witness appears to be quite natural, straightforward and trustworthy; their evidence is supported by recovery evidence and medical evidence. Hence in the aforesaid circumstances we do not find any reason to interfere with

the impugned judgment passed by the learned trial court in convicting and sentencing the appellant. The appeal, therefore, fails and is dismissed.

13. It is pertinent to note that in the present case all four eye witnesses are independent eye witnesses and are not related to deceased Reshma. They were not have any grudge against Appellant. Incident took place in a public place below Building No. 6 and within no time of the incident unfolding, around of 10 to 15 persons gathered at the scene of crime and apprehended Appellant at the spot of incident; evidence given by PW- 5, PW-6, PW-8 fully corroborates the evidence of PW-1 Amina who was present right next to Reshma when she was assaulted by appellant; weapon used by Appellant was recovered and seized from the spot of incident itself.

14. In view of the above discussion and findings, we have no hesitation to hold that Appellant has committed the crime; that Appellant has stolen the weapon from the butcher's shop two hours before committing the crime which goes to show that he had premeditated and planned to commit the overt act with intention to assault and kill Reshma; that apart, the nature of injuries caused on the body of Reshma with the weapon clearly show that he had complete knowledge that those injuries would cause Reshma's death.

15. Prosecution has thus proved the crime of committing murder

of Reshma by appellant beyond all reasonable doubts. Evidence of eye witnesses to the incident is credible and trustworthy; the corroborative evidence namely recovery of weapon at the spot of incident, identification of blood stained clothes worn by Appellant at the time of committing the crime having the blood stains of the blood of Reshma and medical evidence fully corroborates the eye witnesses accounts; hence we are of the considered view that prosecution has proved its case beyond all reasonable doubts that Appellant has committed the ghastly murder of his wife Reshma. We do not find any reason to interfere with the judgment and order passed by the learned Sessions Court convicting Appellant under Section 302 of IPC and awarding rigorous life imprisonment to him.

The Appeal, therefore, fails and is dismissed.

16. Before parting with the Judgment, we would like to place on record appreciation for the efforts put in by Ms. Sonia Miskin, learned Advocate appointed by the High Court Legal Services Committee, Mumbai for espousing the cause of Appellant; she was thoroughly prepared in the matter and rendered proper and able assistance to the Court.

[MILIND N. JADHAV, J.]

[A.S. GADKARI, J.]

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