
(2010) 10 BOM CK 0200
In the Bombay High Court
Case No : Criminal Appeal No. 307 of 2005

Mohammad Umar Hafij	Vs	APPELLANT
The State of Maharashtra		RESPONDENT

Date of Decision : 07-10-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 300, 302

Citation : (2010) 10 BOM CK 0200

Hon'ble Judges : D.D. Sinha, J;A.P. Bhangale, J

Bench : Division Bench

Advocate : Abhay Kumar Apte, for the Appellant; H.J. Dedhia, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Bhangale, J.—This Appeal is directed against the Judgment and order dated 30/07/2002 passed in the Sessions Case No. 276 of 2001 by the learned II Ad hoc Additional Sessions Judge, Thane whereby the Appellant was found guilty of the offence punishable u/s 302 of the Indian Penal Code and sentenced to suffer imprisonment for life and to pay fine in the sum of Rs. 1000/- in default to undergo rigorous imprisonment of three months. Being aggrieved by the judgment and order of conviction, present appeal is filed by the appellant through jail.

2. Brief facts which led to the prosecution of the Appellant are: Complaint was lodged by Sultan (PW3) in respect of the incident which occurred on 27/08/1995 at about 9:00 a.m. at Ambewadi, Thane, after the first informant was informed by his sister's daughter Shabnam (PW4) that his sister Najmunnisa was stabbed on her chest and face by the appellant Mohammad Hafiz. Najmunnisa died as a result of hemorrhagic shock due to the stab injuries to vital organs lung. The Complaint was registered as FIR No 189 of 1995 of at the Wagle Estate Police station (Exh. 22). It was recorded by PW6 Manish Ajinkya on 27/08/1995 who conducted the investigation. The investigating officer proceeded to the spot and

drew spot panchnama (Exh. 17). Big knife (Sura) was recovered from the Spot during the Panchnama. The appellant was searched at his residence by conducting a house search panchnama. He was untraceable as he absconded after the commission of crime. The absconding accused Mohamed Umar Hafiz was arrested by A.P.I. Shri R. K. Jadhav (PW7) after he received information about the place of residence of the appellant on 19/4/2001 from Shivpuri village in Uttar Pradesh. The Appellant was brought to Thane on 22/04/2001.

3. The inquest was drawn as per Exh.7. The dead body was referred for the postmortem examination. Muddemal articles weapon recovered from the spot as well as sample of earth from the spot and clothes of the deceased were referred to the Chemical Analyzer with letter dated 30/08/1995. Reports of Chemical Analysis were received as per Exh. 33 indicating that the sample of earth, cotton swab, clothes of the deceased were found stained with human blood, while no blood was detected on weapon. Results as to blood group, however, were inconclusive. Upon completion of investigation the Charge sheet was filed on 02/04/2001 in the court of the 7th Judicial Magistrate F.C. Thane, on 29/09/2001. The case was committed to the court of Sessions at Thane on 28/06/2001.

4. The Charge was framed on 29/09/2001 (Exh. 2) The accused pleaded not guilty and claimed trial.(plea recorded at Exh. 3).

5. The prosecution examined seven witnesses and closed evidence in the trial Court. The defence of the accused was of total denial.

6. We have heard learned advocate for the Appellant and Learned A.P.P. for the State.

7. PW-1 Dr. Nishikant Kulkarni had conducted postmortem examination of the dead body of the victim Najmunnisa . According to him, he found following external injuries on the dead body:

b) Stab wound on right anterior chest, below lateral end of clavicle, obliquely vertical, elliptical in shape measuring 2.6.cms x 0.5cms x cavity deep.

c) incise wound on left side of chin, size from below angle of mouth to below angle of mandible, measuring 7 x 1 x 1 cms

Doctor found following internal injuries:

1) Incised wound on 2nd and 3rd inter coastal space muscles corresponding to external injury nos. 1 and 2 measuring 2.5 x 0.5 cms each.

2) Oblique tear on pleura on right side noticed,

3) On opening chest, right lung was found pale. Heamothorax 2.2 liters noticed. Incise wounds on right upper, middle and lower lobes of lung corresponding to external injuries Nos. 1 and 2 described above.

8. The cause of Najmunnisa's death, as per medical evidence, was hemorrhagic

shock due to injuries to vital organs lung and the injuries were possible by reason of piercing hard and blunt object. The Doctor opined that all the injuries described by him were antemortem and grievous in nature and internal injuries were found corresponding with the external injuries. The external injuries described were possible by weapon like article.A.

9. PW-4 Shabnam educated up to 5th standard in Urdu medium school is an eyewitness who deposed about the incident. Although she was eight years old at the time of incident, she had witnessed unusual and cruel, unforgettable murder of her mother. We have scrutinized her evidence and found it convincing. The Appellant was known to her as he resided in her neighbourhood as a Tenant and as he was friend of her father, he was on visiting terms to their house. After her Father had met with accident, the Appellant had incurred expenses for her father's Medical treatment. She also deposed about the previous day's incident when the appellant had imputed to her mother alleging that she is woman of bad character. Shabnam's mother had chased the Appellant and who ran away from there. On 27/08/1995 her mother was on her way to Taloja to meet her brother. Shabnam had been following her. The Appellant armed with knife which was concealed inside the newspaper, was standing on the way opposite a shop. He abused her mother and asked her to return the amount back. When her mother refused on the ground that she has no money, the appellant opened the knife and inflicted stab blows on her chest and cheek. Her mother sustained bleeding injuries, fell down and the accused escaped from the spot. Her Mother had died on the spot. She was crossexamined at length. Her crossexamination shows that the accused had inflicted blows of knife obliquely on her mother's cheek. She could not save her mother because the accused had delivered the blows by knife hurriedly and she got frightened. People who saw the incident had closed their doors and those who were washing their clothes nearby, ran away from the spot after they saw the incident. The incident lasted for one or two minutes only. Shabnam then informed the incident to her maternal uncle, who came to the scene and shifted her mother to the Hospital. In Para 8 the cross examination runs thus-

It is false to say that today in court, first time I am seeing the Knife article "A". It is true that after the incident of abusing on previous day, the relations between my Mother and accused became strained. It is false to say that on that account, I am carrying some animus against the accused in my mind. It did not happen that my Mother ran away to protect herself from the accused. It did not happen that the accused stabbed my mother from behind.

10. The tenor of the crossexamination shows that the defence did not seriously dispute the incident of stabbing by the accused and furthermore, nothing worthwhile could be extracted from the eye witness to damage her ocular account of the incident . Though a child witness, aged about 8 year old at the time of incident, Shabnam gave intelligent and rational answers and stood firm in the cross examination. She had no axe to grind against the Appellant to falsely

implicate him in the serious crime of her mother's murder. To corroborate her evidence the prosecution relied upon deposition of Sultan (PW3) who confirmed that PW 4 Shabnam had come to him and said that the accused Mohd Hafiz killed her Mother Najmunnisa.

11. The prosecution also relied upon evidence of PW2 Shailendra Pande who was attesting witness to the spot panchnama (Exh.17) drawn when police visited the spot of incident soon after the incident of murder and furthermore, evidence of PW1 Dr. Nishikant who had performed postmortem examination in respect of the dead body of Najmunnisa (supra). The ascendance of the Appellant in this case is another additional circumstance apart from the above direct and circumstantial evidence to nail the appellant in the crime of murder. Stab wounds were inflicted by the appellant on vital part of the body causing injuries which proved fatal and resulted in the death of the victim Najmunnisa on the spot of incident itself. The facts show that the Appellant intended to cause the injuries on vital part of the victim's body leaving no room for doubt that the Appellant's intention was to commit murder of Najmunnisa, considering the ocular and medical evidence led in the case. The case is clearly covered under under Clause 3rdly of Section 300 of the Indian Penal Code to attract punishment u/s 302 of the Indian Penal Code.

12. We do not find fault with the learned trial Judge who recorded impugned conviction. In the facts and circumstances of the case, we do not find any cogent ground to interfere with the impugned Judgment and order nor any other ground is made out so as to persuade us take a different view than the view taken by the trial Court.

Hence, Criminal Appeal is without merits and stands dismissed.