
(2015) 07 BOM CK 0358

In the Bombay High Court

Case No : Criminal Appeal Nos. 880 of 2013 and 189 of 2014

Ramjan Abdul Hamid Shaikh

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 14-07-2015

Acts Referred:

Bombay Police Act, 1951 — Section 135, 37(1)

Penal Code, 1860 (IPC) — Section 120-B, 143, 144, 147, 148

Citation : (2015) ALLMR(Cri) 3637

Hon'ble Judges : V.K. Tahilramani and Dr. Shalini Phansalkar Joshi, JJ.

Bench : Division Bench

Advocate : Rohini M. Dandekar, Advocate, for the Appellant; G.P. Mulekar, A.P.P., for the Respondent

Final Decision : Dismissed

Judgement

V.K. Tahilramani, J.—Criminal Appeal No. 880 of 2013 has been preferred by the appellant - Ramjan Shaikh original accused No. 7 against the judgment and order dated 6.7.2013 passed by the learned Ad-hoc Additional Sessions Judge, Sewree, Mumbai in Sessions Case No. 82 of 2011. Criminal Appeal No. 189 of 2014 has been preferred by Seed Ahmed Shaikh original accused No. 1 against the very same judgment and order. By the said judgment and order, both the appellants-original accused Nos. 1 and 7 were convicted under Section 302 read with Section 34 of IPC and sentenced to R.I. for life and fine of Rs. 2000/- in default R.I. for one year. For the sake of convenience, the appellants will be referred hereinafter as they were referred before the trial Court i.e. appellant - Seed Ahmed Shaikh will be referred to as accused No. 1 and appellant -Ramjan Shaikh will be referred as accused No. 7. The prosecution case, briefly stated, is as under:

"(i) Deceased Salim was the husband of P.W. 1 Shabana. At the time of the incident, Shabana along with her husband Salim, children and her mother-in-law were residing at Indira Nagar, Govandi, Mumbai. She knew all the accused

persons as they were friends of her husband. In the year 2009, somebody had assaulted her husband Salim in Govandi Kela Market. At that time, Salim was admitted in the hospital and all the accused persons used to come to see him. The persons who had assaulted Salim were arrested in a case under Section 307 of IPC. Those persons offered Salim that they will give him money and he should not identify them during the trial. Accordingly, some amount was paid to Salim. Out of the said amount, Salim had given Rs. 5000/- each to all the accused persons in this case. The accused persons were demanding more money from Salim. However, Salim did not pay more amount to the accused as asked by them, hence, a quarrel took place between Salim and the accused persons.

(ii) On 23.9.2010 at about 9.00 p.m. when Shabana was in her house, one boy came running and told her that a quarrel was going on between her husband Salim and accused No. 3 Mukhtar. When Shabana rushed to the spot, she saw that her husband had taken out leather belt and was assaulting Mukhtar. Mukhtar ran away from the spot. Shabana brought her husband back. Salim then went and sat on the loft near their house. Thereafter, Shabana was serving food to her children and watching Television.

(iii) The incident occurred on the night between 23.9.2010 and 24.9.2010. At about 12.20 to 12.25 a.m. Shabana heard shouts of her husband Salim, hence, she and her mother-in-law came out of the house. Shabana saw 12 persons had encircled her husband. Out of them accused No. 1 Seed Shaikh was holding a chopper, accused No. 7 Ramjan was holding a knife, accused No. 2 Raju was armed with chopper, accused No. 3 Mukhtar was armed with knife and accused No. 4 Shabbir was holding iron rod. All the accused were assaulting Salim with the weapons in their hand. Shabana and her mother-in-law shouted for help. On seeing them, accused persons ran away from the spot. Salim had sustained injuries on his neck, chest, hands, back and other parts of body. Shabana then took Salim in a tempo to hospital. Upon reaching the hospital, the Doctor examined him and declared him to be dead. Shabana then lodged F.I.R. Exh. 37. Thereafter investigation commenced. After completion of investigation, the charge-sheet came to be filed. In due course, the case was committed to the Court of Sessions for trial."

2. Charge was framed against all the accused Nos. 1 to 7 under sections 120-B, 143, 144, 147, 148, 149, 302 read with Section 34 of IPC and for the offence under Section 135 read with Section 37(1) of the Bombay Police Act. The accused pleaded not guilty to the said charge and claimed to be tried. The defence of the accused is that of total denial and false implication. After going through the evidence adduced in the present case, the learned Sessions Judge convicted and sentenced the accused Nos. 1 to 3 and 7 for the offence punishable under Section 302 read with Section 34 of IPC. They were acquitted of all the other charges. Accused Nos. 4 to 6 were acquitted of all the charges leveled against them.

3. We have heard the learned counsel Ms. Rohini Dandekar for both the accused-

appellants and the learned A.P.P. for the State. After giving our anxious consideration to the facts and circumstances of the case, arguments advanced by the learned counsel for the parties, the judgment delivered by the learned Judge and the evidence on record, for the below mentioned reasons, we are of the opinion that there is no merit in the appeals.

4. To support the conviction, the prosecution has mainly relied on the evidence of P.W. 1 Shabana. Shabana was the wife of deceased Salim. She is an eye witness to the incident and she is also first informant in the present case. Shabana has stated that at the time of the incident she was residing along with her husband Salim, children and mother-in-law at Indira Nagar, Govandi, Mumbai. She has stated that she knew all the accused persons as they were friends of her husband Salim. All the accused were residing in the same area where Shabana used to reside with her family. The accused used to visit their house. She has further stated that in the year 2009, somebody had assaulted her husband Salim in Govandi Kela Market. At that time, her husband was admitted in the hospital and all the accused persons used to come to see him. The persons who had assaulted Salim were arrested in a case under Section 307 of IPC. Those persons offered Salim that they will give him money and he should not identify them during the trial. Accordingly, some amount was paid to her husband. Out of the said amount, Salim had given Rs. 5000/- each to all the accused persons in the present case. The accused persons were demanding more money from Salim. However, Salim did not pay more amount to the accused as asked by them, hence, a quarrel took place between Salim and the accused persons. Shabana has further stated that on 23.9.2010 at about 9.00 p.m. when she was in her house, one boy came running and told her that a quarrel was going on between her husband and accused No. 3 Mukhtar. When she rushed to the spot, she saw that her husband had taken out leather belt and was assaulting Mukhtar. Mukhtar ran away from the spot. Shabana brought her husband Salim back. Her husband then went and sat on the loft near their house. Thereafter, Shabana was serving food to her children and watching Television. Shabana has further stated that at 12.20 to 12.25 a.m. she heard shouts of her husband. Shabana and her mother-in-law came out of the house. They saw 12 persons had encircled Salim. Shabana saw accused No. 1 Seed Shaikh holding chopper and accused No. 7 Ramjan holding knife. Three other accused persons were also holding weapons. All the accused assaulted her husband Salim with weapons in their hands. Shabana and her mother-in-law shouted loudly. As soon as the accused saw Shabana and her mother-in-law, they ran away from the spot. Her husband Salim fell down. Shabana noticed that her husband Salim had sustained injuries on his neck, chest, back, hands and legs etc. She then took Salim to the hospital where the Doctor declared him to be dead. Shabana then lodged F.I.R. Nothing has been elicited in the cross-examination of Shabana so as to discredit her testimony in relation to both these accused-appellants, hence, we have no hesitation in relying on the evidence of Shabana which shows that accused No. 1 Seed Shaikh assaulted Salim with chopper and accused No. 7 Ramjan assaulted

Salim with knife.

5. Reliance is also placed by the prosecution on the evidence of P.W. 2 Shamin Patel. Shamin was also residing in Indira Nagar Govandi, Mumbai since last four years. She has stated that she knew all the accused before the Court because accused used to often visit the area. Shamin has stated that since 15 days prior to the incident, a quarrel between Salim and the accused persons was going on. On 23.9.2010 at about 8.30 p.m. she had seen Salim assaulting accused No. 3 Mukhtar with a leather belt. On that day at about 12 midnight, she heard shouts "Shabbo, Amma Bachav". At that time, she saw the accused were assaulting Salim with various weapons. They were having weapons like knife, sword, chopper etc. The accused then ran away from the spot. Salim was taken to the hospital. After sometime, she came to know that Salim had expired.

6. It is the prosecution case that accused No. 1 Seed Shaikh assaulted Salim with a chopper and accused No. 7 Ramjan assaulted Salim with a knife. The medical evidence supports the case of the prosecution. P.W. 7 Dr. Bagul conducted the post-mortem on the dead body of Salim. He noticed 23 incised wounds on the neck, chest, back, arms and other parts of body. Dr. Bagul has stated that all the injuries were ante-mortem in nature and cause of death was due to multiple stab injuries over chest, abdomen and back region with internal vital structural injuries with internal hemorrhage in a case of assault with sharp edged object. According to Dr. Bagul, the death was unnatural. Dr. Bagul has further stated that injuries sustained by Salim were possible by chopper and knife.

7. On going through the evidence on record, we find that the evidence of eye witnesses especially P.W. 1 Shabana is enough to sustain conviction of both the appellants-accused, hence, we do not think it necessary to advert to the other evidence. We find that there is sufficient evidence on record to prove beyond reasonable doubt that both the accused appellants committed the murder of Salim by assaulting him with sharp edged weapons. Thus, we find no merit in the appeals. Both the appeals are dismissed. We quantify legal fees to be paid to Advocate Ms. Rohini Dandekar by the High Court Legal Services Committee at Rs. 5000/- in each appeal.