Conviction and Sentencing in Murder Case

Case Name: Raisoddin Alias Guddu S/O Mohammad Amiroddin v. State of Maharashtra

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Citation: 2024:BHC-AUG:23836-DB

Act: Indian Penal Code, Arms Act

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.197 OF 2021

1) Raisoddin alias Guddu s/o
Mohammad Amiroddin,
Age 35 years, Occ. Agriculture,
R/o Qadrabad Plot, Ashraf Corner,
Parbhani, Taluka & District Parbhani

2) Raufabegum alias Gauribi w/o
Mohd. Amiroddin, Age 70 years,
Occu. Agriculture & Household,
R/o as above.

3) Akbarouddin s/o Mohd. Amiroddin,
Age 42 years, Occ. Agriculture,
R/o as above.

(At present the Appellants/ accused
are in Aurangabad Central Prison,
Harsool, Aurangabad, Taluka and
District Aurangabad) … **APPELLANTS**
(Orig. Accused No.1, 3 & 4)

VERSUS

1. The State of Maharashtra
through the Police Station Officer,
Police Station, New Mondha,
Parbhani, Taluka & District Parbhani

(Notice to the respondent be served
through the Public Prosecutor,
High Court of Bombay,
Bench at Aurangabad) … **RESPONDENT**

.....

Mr. Rajendra Deshmukh, Senior Counsel with
Mr. Vishal Chavan, Jay Veer, i/b
Mr. Devang Deshmukh, Advocate for appellants
Mrs. Uma S. Bhosle, A.P.P. for respondent – State, assisted by
Mr. Quadri Tabrezuddin Rahimuddin, Advocate for complainant

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CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ.

Date of reserving judgment : 3rd September, 2024.

Date of pronouncing judgment : 1st October, 2024.

JUDGMENT (PER R.G. AVACHAT, J.) :

The judgment and order of conviction and consequential sentenced passed by Additional Sessions Judge-4 Parbhani (Trial Court) on 18/2/2021 in Sessions Case, No.41/2016 is under challenge in this appeal.

2. The appellants before us are a mother and her two sons. Her husband too was one of the accused in the said Sessions Case. He died pending the trial. The trial, therefore, stood abated against him.

The appellants No.1 to 3 have been convicted for the offence punishable under Section 302 of the Indian Penal Code and sentenced to suffer imprisonment for life and to pay fine of Rs.10,000/- (Rupees ten thousand), in default of payment of fine, to undergo R.I. for 2 years. The appellants No.1 to 3 are also convicted for the offence punishable under Section 307 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for seven years and to pay fine of

Rs.5000/- (Rupees five thousand), in default to undergo R.I. for one year.

The appellant No.1 Raisoddin has also been convicted for contravention of Section 4 r/w Section 25 of the Indian Arms Act and sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.2000/- (Rupees two thousand), in default to undergo R.I. for one month.

All the substantive sentences have been directed to run concurrently.

The appellants have been acquitted of the offence punishable under Section 504 of the Indian Penal Code. Whereas the appellant No.2 Raufabegum @ Gauribi and appellant No.3 Akbaroddin have been acquitted of the offence punishable under Section 4 r/w 25 of the Indian Arms Act.

3. The case of the prosecution, in brief, was as follows :-

Raufabegum @ Gauribi (appellant No.2) (hereinafter referred to as Gauribi) is the sister of P.W.4 Sk.

Masiyoddin. There are agricultural lands, Gut Nos.250 and 255, situated within the limits of city of Parbhani. A civil suit and revenue proceedings were pending between the family of appellants on one hand and P.W.4 Masiyoddin and others on the other. Admittedly, all of them have share in both the lands. Land Gut No.255 was converted into N.A. assessment. The land Gut No.250 has N.A. potential.

4. Raisoddin (appellant No.1) is the son of appellant No.2 Gauribi, who is maternal aunt of P.W.3 Sk. Khijar. The incident took place by little past 6.00 p.m. on 13/12/2015 on the land Gut No.250. About half an hour therebefore, P.W.3 Khijar had asked A/1 Raisoddin to give him back the PVC pipes temporarily given by him to A/1. A/1, in turn, asked him first to pay money/ cost of the fodder supplied to P.W.3 Khijar and then he would return the PVC pipes. P.W.3 Khijar told him the fodder money to have already been paid by his father. A quarrel was said to have ensued between the two. A/1 Raisoddin went back hurling abuses to P.W.3 Khijar.

5. After a while i.e. 6.30 p.m., the appellants and Mohd. Amiroddin, then accused No.2 (since deceased), came together to a buffalo shed of P.W.3 Khijar. A/1 was holding a

knife (Khanjir). Amiroddin (since deceased) was holding a sword. A/3 Gauribi was having an iron pipe. Azharoddin (deceased) convinced them not to abuse. Thereupon A/3 pierced Khanjir in the stomach of Azharoddin. A/2 Gauribi assaulted on Azhar's head with iron pipe from behind. Khijar's father intervened to rescue his son Azhar. Amiroddin (since deceased) assaulted him with a sword. A/3 Akbarouddin beat up the father of Khijar with kicks and fist blows.

6. P.W.3 Khijar rushed the injured to a Government Hospital. Azhar was declared dead. Khijar's father was shifted to Nanded as his condition was critical. P.W.3 Khijar then approached Mondha Police Station and lodged the First Information (F.I.R. Exh.77).

7. A crime vide C.R. No.279/2016 for the offences punishable under Sections 302, 307, 504 read with Section 34 of the Indian Penal Code and Section 4 read with 25 of the Arms Act was registered against the appellants and Amiroddin (since deceased). The A/1 Raisoddin and Amiroddin (since deceased) made disclosure statements, pursuant to which a knife, sword and iron pipe came to be recovered from two different places in the presence of panchas. Clothes on the

person of the deceased at the time of the incident and that of the appellants and injured were seized under different panchanamas. Services of a sniffer dog were availed. From the crime scene a pair of Chappal, some earth and earth mixed with blood came to be seized. Statements of persons acquainted with the facts and circumstances of the case were recorded. Upon completion of the investigation, a charge sheet was filed against all the four.

8. The Trial Court framed the Charge (Exh.209). The appellants pleaded not guilty. The defence of A/1 was that, by 5.00 p.m. on the given day, he was watering the crop in the field. Azhar and Masiyoddin assaulted him with a spade. He suffered grievous injury to his right thumb and index finger. The injury was sutured with 8 stitches. He then returned home and went to hospital for treatment. Police forcibly arrested him in the hospital. During suggestion to some of the prosecution witnesses, a defence was put up that the injured were assaulted by someone else in the village.

9. To bring home the charge, the prosecution examined 19 witnesses and produced in evidence certain documents. After appreciation of the evidence in the case, the

Trial Court convicted and consequently sentenced the appellants as stated above.

10. Heard. Learned Senior Advocate representing the appellants would submit that, it was a month of December. Sunset by little past 5.00 p.m. The incident took place in a cattle shed on the field. The crime scene panchanama and the evidence of the prosecution witnesses did not disclose that there was electricity. The learned Senior Advocate meant to say that, it was dark and the victims were, therefore, unable to identify the assailants. He would further submit that, admittedly a civil dispute was pending before the Civil Court and revenue authorities as well. The lands in dispute have N.A. potential. The appellants have share in those lands. Only with a view to deprive them of their rightful claim, a false F.I.R. has been lodged against one and all the members of the same family. He would further submit that, A/1 was in fact assaulted by Azhar and Masiyoddin with a spade. He brought to our notice a photograph indicating his right hand below the wrist was completely bandaged. It was therefore, difficult for him to hold a Khanjir in the very hand and make assault therewith. Admittedly, he was not lefty. He would further submit that, the father of A/1 was 70 plus. He was a patient of

Asthma. He used to be brought before the Trial Court lifting him by 2/3 persons. It was just impossible for him to make an assault with a sword. A criminal case was also instituted by A/1 against those who assaulted him with a spade. The same resulted into acquittal. Unfortunately, no appeal has been preferred thereagainst.

11. Learned Senior Advocate has also placed on record a written notes of his submissions. According to him, a pair of Chappal, Namaz-Cap was seized from the crime scene. No investigation was made in that regard to prove that the cap belonged to A/1. The evidence of the witnesses to the spot and seizure panchanama are not consistent with each other. Admittedly, P.W.3 Khijar (informant) did not understand Marathi. In his cross-examination, he was called upon to read the F.I.R. He could not. No police official has been examined who recorded the F.I.R., which is in Marathi. When the injured had suffered serious bleeding injuries, it is surprising that P.W.3 Khijar who carried them to the hospital did not get clothes on his person stained with blood. The prosecution failed to explain the injuries on the person of A/1. All the prosecution material witnesses are relations of each other. The so called independent witness- P.W.6 Kamlakar was

unreliable. Turning to the medical evidence on record, he would submit that, certain standard procedure was not followed by the concerned Medical Officer while preparing post mortem notes. Panch to the inquest panchanama was a Government servant. The panchanama was drawn on Sunday, a holiday. His presence to the said panchanama was therefore doubtful. The panchanamas on record appear to have been forged. So far as regards injuries to she buffalo are concerned, nothing was brought on record that the buffalo belonged to the informant and she really suffered injury during the incident. P.W.11 Dr. Sonali had examined A/1 Raisoddin and injured Masiyoddin same time.

12. Learned Senior Advocate would further submit that, photographs were snapped of the incident indicating A/1 was taking out a knife. The photographer, however, admitted that, no panchanama was drawn in his presence (when the Chappal pair was used, availing services of a sniffer dog, 4 days had already been passed post his seizure). The same suggests the articles taken charge from the crime scene were neither seized before they were sent to Forensic Science Laboratory, Aurangabad. According to the learned Senior Advocate, the evidence on record fell short to bring home the charge beyond

reasonable doubt. He, therefore, urged for allowing the appeal.

13. The learned A.P.P. and the learned Advocate who assisted the learned A.P.P. would, on the other hand, submit that the case was based on evidence of an injured eye witness. Evidence of an injured witness stands on higher footing. The victims have no reason to falsely implicate the appellants, sparing the actual culprits. She took us through the evidence on record and also relied on the case of **Shahaja Alias Shahajan ismail Mohd. Shaikh Vs. State of Maharashtra (AIR OnLine 2022 SC 1011)** and particularly paras 25, 26, 27, 29 to 32, which read :-

> "25. It appears from the evidence on record, more particularly the evidence of the PW-1 Nandlal Ramnihor Mishra (Exh. 12), that both, the deceased and appellant herein were known to him. The PW-1 Nandlal knew both as they all used to reside in the same locality i.e. nearby the Hanuman temple situated at the Vile Parle railway station. The PW-1 in his oral evidence has talked about the fight that first ensued at 10:30 P.M. between the deceased and the appellant somewhere near the west ticket window of Vile Parle Railway Station. The fight between the two was on account of money. It appears that thereafter at about 12:00 in the night while the deceased was sleeping, the appellant herein laid an assault on the head of the deceased with a hammer. The PW-1 Nandlal witnessed the same on hearing the noise. After the assault was over, the PW-1 is also said to have

confronted the appellant herein by asking him whether he had killed the deceased. We do not find anything improbable in the examination-in-chief of Nandlal (PW-1) more particularly considering a very scant & deficient cross-examination. We take notice of the fact that except a minor contradiction in the form of an omission, nothing substantial could be elicited from the cross examination of the PW-1 so as to render his entire evidence doubtful.

26. The PW-8 Udaysingh Ramsingh Thakur (Exh.29) is also one of the eye witnesses to the incident. He also knew the deceased as well as the appellant as they all used to work as labourers in the locality of Vile Parle. So far as the evidence of the PW-8 Udaysingh is concerned the defence has been able to bring on record a major contradiction in the form of an omission as the PW-8 in his police statement recorded under Section 161 of the Cr.PC had not stated anything about the appellant inflicting blows with a hammer on the head of the deceased. The PW-8 in his cross-examination stated that he had no idea as to why the police did not record in his police statement the factum of assault with the hammer. However, the PW-8 in his evidence has deposed that after the incident the appellant was confronted by the PW-1 Nandlal. Some part of the evidence of the PW-8 corroborates the oral testimony of the PW-1 Nandlal.

27. The appreciation of ocular evidence is a hard task. There is no fixed or straight-jacket formula for appreciation of the ocular evidence. The judicially evolved principles for appreciation of ocular evidence in a criminal case can be enumerated as under:

I. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinize the

evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief.

II. If the Court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details.

III. When eye-witness is examined at length it is quite possible for him to make some discrepancies. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence.

IV. Minor discrepancies on trivial matters not touching the core of the case, hyper technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.

V. Too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.

VI. By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.

VII. Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.

VIII. The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind whereas it might go unnoticed on the part of another.

IX. By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.

X. In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person.

XI. Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

XII. A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross examination by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The subconscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the

witness is giving a truthful and honest account of the occurrence witnessed by him.

XIII. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Unless the former statement has the potency to discredit the later statement, even if the later statement is at variance with the former to some extent it would not be helpful to contradict that witness.

[See Bharwada Bhoginbhai Hirjibhai v. State of Gujarat, 1983 Cri LJ 1096 : AIR 1983 SC 753, Leela Ram v. State of Haryana, AIR 1999 SC 3717, and Tahsildar Singh v. State of UP, AIR 1959 SC 1012]

29. There is nothing palpable or glaring in the evidence of the two eye-witnesses on the basis of which we can take the view that they are not true or reliable eye-witnesses. Few contradictions in the form of omissions here or there is not sufficient to discard the entire evidence of the eye-witnesses.

30. In the aforesaid context, we may refer to a decision of this Court in the case of State of U.P. v. Anil Singh, AIR 1988 SC 1998, wherein in para 15, it is observed thus :

> "15. It is also our experience that invariably the witnesses add embroidery to prosecution story, perhaps for the fear of being disbelieved. But that is no ground to throw the case overboard, if true, in the main. If there is a ring of truth in the main, the case should not be rejected. It is the duty of the court to cull out the nuggets of truth from the evidence unless there is reason to believe that the inconsistencies or falsehood are so glaring as utterly to destroy confidence in the witnesses It is necessary to remember that a Judge does not preside over a criminal trial merely to see that no innocent man is punished.

> A Judge also presides to see that a guilty man does not escape. One is as important as the other. Both are public duties which the Judge has to perform."
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> 31. The medical evidence on record further corroborates the ocular version of the eye witnesses. The PW-6 Dr. Shivaji Vishnu Kachare (Exh. 25) in his evidence has deposed that the cause of death is due to the head injury. The expert witness has also deposed that all the injuries were in the nature of Contused Lacerated Wound & could have been caused by a weapon like hammer.
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> 32. The chemical analysis report (Exh.10) of the forensic science laboratory indicates that there were stains of human blood on the hammer matching with the blood group of the deceased i.e. 'A' group."

14. The learned A.P.P. meant to say that, while appreciating the evidence of a witness, the approach must be whether the evidence of a witness read as a whole, appears to have a ring of truth. She brought our attention to Point No. (I) to (XIII) quoted in para 27 of the judgment relied on. According to her, minor discrepancy on trivial matters not touching the core of the case and not going to the root of the matter should not ordinarily permit rejection of the evidence as a whole. She would further submit that, the medical evidence on record corroborates the ocular version. The C.A. reports reinforce the prosecution case. She also relied on para 13 of the judgment

delivered by the very Court in case wherein A/1 was the victim and deceased Azhar and P.W.4 Masiyoddin were the accused. She also placed on record copy of evidence of that case. It needs no mention that, evidence of one case cannot be read in the other that too for the first time in appeal.

15. The learned Advocate representing the victim made similar submissions and placed on record written notes of his arguments along with the following authorities :-

(1) Pattu Rajan Vs. The State of Tamil Nadu
2019 2 ACR 1087

(2) Joy Devaraj Vs. State of Kerala
2024 0 Supreme (SC) 537

(3) Sanjay Puran Bagde & anr. Vs. The State of Maharashtra [2022 7 Supreme 755]

(4) Sudha Renukaiah & ors. Vs. State of A.P.
2017 4 Supreme 275

(5) Amar Singh Vs. Balwinder Singh & ors.
2003 1 Supreme 353

(6) Nand Kumar Vs. State of Chhattisgarh
2015 1 Suypreme 616

(7) Prahalad Patel Vs. State of Madhya Pradesh
2011 2 Supreme 210

(8) Rakesh & another Vs. State of Madhya Pradesh
2011 6 Supreme 630

(9) Kartik Malhar Vs. State of Bihar

1995 0 Supreme (SC) 1152

(10) Omkar Singh Vs. Jaiprakash Narain Singh & anr.
2022 2 Supreme 637

(11) State of Karnataka Vs. K. Yarappa Reddy
1999 8 Supreme 496

16. We have perused the above authorities. The notes of arguments is a summary of the evidence of prosecution witnesses. According to learned Advocate, in case of a faulty investigation, if any, the rest of the evidence must be scrutinized independently. Criminal justice should not be made the casualty for the wrongs committed by the investigating officers in the case. He then took us to Section 34 of the Indian Penal Code to indicate each and every appellants who shared common intention and even if one of them has played a little role, he would equally be liable to be punished and sentenced provided for the main offence.

No one can dispute the legal proposition in that regard.

17. So far as regards other judgments relied on by the learned Advocate are concerned, in our view, there can hardly be a precedent in criminal cases which are mainly decided on

facts obtainable therein. We are also conscious of the fact that it is the quality and not quantity of that matter. Conviction can be based on the evidence of a solitary witness. There is, however, a rider that such a witness should be of sterling quality. Without detaining us to the submissions advanced by the learned Advocates, we propose to advert to the evidence on record and appreciate the same.

18. P.W.1 Nilesh and P.W.2 Devraj are the panchas to the crime scene panchanama (Exh.55). The same was drawn from 2.45 p.m. to 6.00 p.m. on 14/12/2015. The learned Senior Advocate for the appellants referred to the said panchanama to bring to our notice that there is nothing to indicate availability of electric supply. The reading of the panchanama indicates it to be a place at a cattle shed. Three she buffaloes were tethered. There was a pool of blood. A chocolate colour Chappal pair was found on the spot. The same was seized besides seizure of earth and blood mixed earth. Evidence of both the panchas and the police officer Sudhakar Jagtap (P.W.18) who drew the same suggest the articles seized were sealed on the spot and brought to the police station.

19. P.W.9 Dr. Rahul conducted the autopsy on the mortal remains of Azhar. He noticed injuries at front side on right hypocondyle region of Azhar, his small and large intestine came out of abdomen. Due to said injury 13 cm. small and large intestine came out. Second injury was at right chest 5 cm. from nipple right side over the sternum (middle portion of chest). The size of injury was 3 cm. long, 1 cm. wide and 2 cm. deep. Third injury was on right 3 x 1 cm. Fourth injury was right shoulder of 4 x 1 cm.

P.W.9 Dr. Rahul also noticed some injuries on back of deceased Azhar. Those were

(1) mid scapular region on vertebral column having 2 cm long, 1 cm wide and 5 cm deep horizontal towards leg.
(2) Second injury was below right shoulder 4 cm long, 1 cm wide and 5 cm deep.
(3) Third injury was left shoulder 3 x 1 cm.
(4) Next injury was on base of neck on right side above sterno clavicular angle 5 x 2 cm.

20. According to him, he could not explain whether the injuries were ante mortem or post mortem as no space was

available in the report and due to some heavy work, he forgot to mention the same. We have no reason to disbelieve his claim. In his opinion, the deceased died of "Cardio respiratory arrest due to hypovolmic shock due to multiple stab injuries with lung rupture." The post mortem report is at Exh.125.

21. During his cross-examination, it has been brought on record that, the post mortem report did not bear Outward Number. It also did not bear endorsement of the Civil Surgeon asking him to do the post mortem examination. There is correction in the date from 13 to 14 in Column No.4. The post mortem report is silent that he collected (sealed) and handed over clothes of the deceased to a responsible police officer. Rest of the questions were general and in the nature of medical literature.

22. P.W.9 Dr. Rahul is an independent witness. His evidence lead us to agree with his conclusion i.e. the cause of death of deceased Azhar.

23. P.W.11 Dr. Sonali examined P.W.4 Masiyoddin on 13/12/2015. She was a Casualty Medical Officer on duty that time. She noticed two stab injuries. First was on left abdomen

of size 6 x 5 x 5 cm., it was grievous in nature. Second injury was on left chest of size 3 x 2 x 6 cm., it was grievous in nature. Both the injuries were on vital part, caused by sharp object within six hours.

She issued the injury certificate (Exh.134). The same corresponds with her oral evidence in examination-in-chief regarding the injuries on the person of P.W.4 Masiyoddin. According to her, the Medico Legal Certificates are silent to record history. She explained that had the injured given the history, she would have recorded the same. She further admitted that, on the same day she examined A/1 Raisoddin. He had suffered incise and grievous wound, those were also caused by sharp object. Age thereof was within 6 hours and even may be within 1 hour. She issued the certificate three months after examination of Raisoddin. She had no difficulty to issue the same immediately. The injury certificate of Masiyoddin indicates that he was referred to Nanded for further treatment. Both Azhar and Masiyoddin were brought to the hospital by Fasiyoddin.

24. P.W.12 Dr. Sayed Qadri was a Veterinary Doctor. He examined she buffaloes on 15 December. He found injury to her udder.

25. The prosecution appears to have not examined any Medical Officer from Civil Hospital, Nanded, wherein Masiyoddin was admitted. No medical papers of his examination at the said hospital have also been produced and admitted in evidence.

26. Let us now turn to the ocular evidence. It is in the evidence of P.W.3 Khijar (informant) that a month before the incident, he had given 40 PVC pipes to A/1 Raisoddin for watering his wheat crop. By 5.30 p.m. on 13/12/2015, he asked Raisoddin to give back his PVC pipes. He (A/1) thereupon made a demand of cost of fodder supplied. Khijar, in turn, informed him the same to have already been paid by his father. Appellant Raisoddin thereupon went back after abusing him (Khijar).

It is further in his evidence that, by 6.30 p.m. all the appellants along with Amiroddin (since deceased) came together. A/1 Raisoddin was armed with a knife (Khanjir).

Amiroddin (since deceased) was holding a sword. A/3 Gauribi was having iron pipe. They started abusing him (Khijar) and his family members. His brother Azhar (deceased) tried to reason with them. A/1 Raisoddin thereupon assaulted on the stomach of Azhar with knife (Khanjir). A/3 Gauribi inflicted blow on his head with iron pipe. When his father intervened to rescue Azhar, A/2 Amiroddin thrusted sword in his stomach. A/3 Akbar beat up Masiyoddin with kicks and fist blows. He called autorickshaw and took his brother and father to Government Hospital. The Medical Officer there declared Azhar dead. His father was shifted to Civil Hospital, Nanded. He then went to Mondha Police Station and lodged F.I.R. (Exh.77). He identified the articles knife, sword and iron pipe shown to him before the Court. According to him, he saw the incident in the electric light, at buffalo shed.

27. He was subjected to a searching cross-examination. A family tree (genealogy) was first brought on record. Then it has also been brought on record that lands Gut Nos.250 and 255 were inherited property from forefathers. The appellants too were in possession of some portion in both the lands. The lands had N.A. potential. Even a lay-out of plots was drawn in land Gut No.250.

28. It has further been brought on record that, he took education in Urdu medium school. In examination-in-chief, he stated to have lodged the F.I.R. in Marathi language. He admitted in the cross-examination that he did not understand Marathi words since he took education in Urdu. He went on to admit that he always converse in Hindi or Urdu. He was then called upon to read out the F.I.R., which is in Marathi. He admitted that, he could not read the contents of the F.I.R. because of it being in Marathi language. According to him, he could have read the F.I.R. if it were in Urdu language.

29. It has further been brought on record that the appellants did not have their Akhada on the land. They live at Qadrabad Plot. Qadrabad is towards West of Parbhani city. While land Gut No.250 was to the East of Parbhani city. Before reaching Civil Hospital, none of them approached Mondha Police Station or Nanalpeth Police Station which were on the way to Civil Hospital. According to him, police did not seize his clothes since those were not stained with blood. The clothes of the injured were only stained with blood. He went on to admit that there was police outpost in front of Casualty Ward on the premises of Civil Hospital, Parbhani. The

information is given at the Police Outpost. He volunteered to state that, he had been there but it was not accepted. He, however, admitted that, his F.I.R. is silent to state the same. He went on to admit that, Fasiyoddin was his uncle. He was present outside the Court. He had accompanied him to the Court on each and every date. It was further in his evidence that, he did have a cell phone with him while the incident took place. He did not inform his relatives about the incident. His father was unconscious. He admitted that, none of the appellants were left handed (lefty). He admitted that, his report to the police is silent to state therein that he saw the incident in electric light at cattle shed. He did not state the police the exact abusive words hurled by the appellants. He denied appellant Rsisoddin's right hand had suffered incised wound on the given day.

30. P.W.4 Masiyoddin testified on the lines of the evidence of P.W.3 Khijar. We, therefore, do not reproduce his evidence in examination-in-chief. His evidence suggests that, he intervened to rescue his son Azhar. Amiroddin (since deceased) thrusted sword in his stomach. His intestine protruded. According to him, A/3 Akbar caught hold of him and beat with fists and kicks. He became unconscious. Appellant

Gauribi is his real sister. His evidence further disclose that his police statement was first time recorded at Civil Hospital, Nanded on 25 December i.e. 12 days after the incident.

31. He too was subjected to a searching cross-examination. He admitted to have filed a civil suit against Amiroddin (since deceased) and his own father. He never used wrist watch. According to him, Kamlakar (P.W.6) told him about the time of the incident. According to him, he gained somewhat consciousness two days after the incident. He went on to admit that, Shafiyoddin informed him about the incident. He denied to have not been in the know of the incident until 25 December and therefore, did not give statement to police. He was suggested that some quarrel took place in the village and therein he suffered the injury. He admitted that, the quarrel took place between appellant Raisoddin and his son by 5.30 p.m. He, however, denied that, Raisoddin sustained injury in the said incident. He denied to have assaulted appellant Raisoddin with a spade.

32. P.W.5 Sharifoddin is not an eye witness to the incident. He claimed to have joined the injured and P.W.3 Khijar while they were on way to hospital in autorickshaw. He,

however, admitted to have not himself reported the matter to the police.

33. P.W.6 Kamlakar's evidence is to the effect that he had been to the cattle shed (crime scene) to buy milk. It was little past 6.00 p.m. He saw the incident. He reiterated the incident as has been given in evidence by the informant – P.W.3 Khijar. Therefore, we do not reproduce the same.

34. He is a witness to the panchanama of seizure of clothes of appellant Raisuddin. According to him, the clothes were seized in his presence under panchanama (Exh.108). It was drawn on 14 i.e. next day of the incident. It is further in his evidence that, again on the following day, he was summoned to the Police Station and in his presence clothes of Masiyoddin which were brought from the hospital, were seized under panchanama (Exh.109).

35. In the cross-examination, he admitted to have not intervened to subside the quarrel. When he had been to the Police Station on 14 and 15 i.e. on the next day of the incident, he on his own did not relate the police to have witnessed the incident. Same happened on 15 i.e. on the second day after

the incident. His evidence further indicates that it was only on 18 December i.e. 5 days after the incident his police statement was recorded.

36. We here itself discard the evidence of P.W.6 Kamlakar as regards what has been deposed to by him as an eye witness account. His conduct is grossly unnatural. On two consecutive days immediately next after the incident, he had been to the Police Station and acted as a panch witness, still he did not relate the police about having witnessed the incident. Even on 18 i.e. on the day on which his police statement was recorded, he went to the Police Statement and gave statement only after police summoned him and not visiting the Police Station on his own. It is reiterated that, these facts rendered him unreliable witness.

37. P.W.7 Sayyed Sardar is a witness to the inquest panchanama (Exh.116). We do not propose to dilate much on his evidence. P.W.8 Kazi Gaffroddin is a witness to various panchanamas (Exh.119 to 122) relating to seizure of clothes of Amiroddin, Akbaroddin, Gauribi and Raisoddin. His evidence is silent to indicate that the clothes were seized after removing them from the body of respective persons. According to him,

police asked him to put signature on the panchanamas relating to seizure of clothes. The same indicates that, clothes were there already available and simply packed in his presence. The evidence of this witness, therefore, does not carry much relevance to further the prosecution case.

38. The evidence of P.W. 10 Jivan is not referred to since his evidence simply pertains to drawing of sketch of the crime scene 3-4 days after the incident. He was a revenue officer at the relevant time. P.W.13 Kailash is a panch witness to two disclosure statements, one made by A/1 Raisoddin and second made by Amiroddin (since deceased). We do not propose to refer to his evidence in relation to the disclosure statement made by the deceased accused.

It is in his evidence that, on 17 December, he went to Mondha Police Station. Appellant Raisoddin stated in his presence to have kept a knife in bushes in the Jayakwadi area of Parbhani. He also told that he would take them to that place and take out the knife. His statement was accordingly recorded. It is at Exh.141. His evidence further indicates that, accordingly, he along with other panch, police officials and appellant Raisoddin went to area known as Kalyan Mandapam

at Jayakwadi area. The vehicle was stopped there. The appellant led them to a place of bushes. He took out a knife therefrom. It was seized under seizure panchanama Exh.141. According to him, a slip containing his signature was affixed.

39. In his cross-examination, he testified that, he was not issued a letter by police for availing his services as panch witness. He denied that no such thing that the appellant gave a disclosure statement and then took out a knife from the said place did happen.

40. P.W.14 Sushil was a photographer, who had snapped the photos of the fact that A/1 Raisoddin was taking out knife from the bushes he referred to those photographs on record. In his cross-examination, however, he gave a vital admission that no panchanama was drawn in his presence.

41. As such, his evidence runs counter to the evidence of P.W.13 who claimed that a seizure panchanama was drawn in his presence. Admittedly, P.W.14 Sushil was in their company. While the A/1 Raisoddin made a disclosure statement and led them to that very place. P.W.15 Sandip was another photographer who snapped photographs of the dead

body. While P.W.16 Narayan was the then Police Constable who carried the seized articles to FSL, Aurangabad on 29/12/2015 along with a forwarding letter (Exh.150). P.W.17 Rajendra is Head Constable who had brought the clothes of deceased Azhar from the Medical Officer to the Police Station and delivered them to investigating officer, P.I. Jagtap. P.W.19 Nivrutti was a Police Havaldar. His evidence pertains to sniffer dog activities. According to this witness, on 17/12/2015 by 1.15 p.m. a sniffer dog was summoned. A pair of Chappal was removed from a packet. The dog sniffed the Chappal and then climbed on the person of A/1 Raisoddin who was made to stand along with 6-7 other dummies.

42. In our view, this witness, instead of helping the police, indicates that, the footwear was not in sealed condition. There is also no evidence to indicate that, after it was availed for sniffer dog activity, the same was again sealed and then sent to FSL, Aurangabad. Be that as it may.

43. P.W.18 Sudhakar Jagtap did the investigation of the crime. We do not propose to reiterate his evidence since what activities he did or got done have already been brought on

record through the evidence of panch witnesses and Medical Officers.

44. The C.A. reports (Exh.169 to 175) pertain to the seized articles, blood groups of the appellants, deceased and injured. The blood group of deceased Amiroddin (accused) was “A”. Exh.169 indicates blood group of Mohd. Akbar was “A” while blood group of Mohd. Amiroddin was “AB”.

45. The blood group of both Raisoddin and Masiyoddin is “A”. the blood detected on knife and sword was human. The blood group of the blood found on knife was “A” group. No blood group on the iron pipe could be determined as the result was inconclusive.

46. It is, however, not known as to why all the seized articles were sent to FSL on 29 December i.e. 16 days after the incident. In what condition those were kept at the Police Station is not known. We have every reason to observe since a pair of Chappal was removed on 17 December, there is no evidence to indicate that it was again sealed in the presence of panchas. Be that as it may, since the case is based on eye witness account.

APPRECIATION :

47. Appellant Gauribi is the real sister of P.W.4 Masiyoddin. Deceased Azhar was Masiyoddin's son. The crime scene panchanama (Exh.55) indicates the incident took place in a cattle shed on the land Gut No.250. True, the incident took place little past 6.00 p.m. As it was December, sun set earlier. It is a case of inflicting injuries with weapons that too by known persons. It, therefore, cannot be observed that the injured, and so called eye witness could not see assailants due to darkness. The cause of death of Azhar was "Cardio respiratory arrest due to hypovolmic shock due to multiple stab injuries with lung rupture." While injury certificate of Masiyoddin (Exh.134) indicate him to have suffered stab injury in his left abdomen and another stab injury at his left chest. Both the injuries were grievous in nature and caused with sharp object. The age thereof was within 6 hours. He was examined by 7.00 p.m. on 13 December itself. It is true, at the same time A/1 Raisoddin was examined by the very doctor, P.W.11 Dr. Sonali. She noticed him to have suffered incised and grievous wound caused with sharp object. The age of the said injury was even within 6 to 1 hour. The photograph referred by learned Senior Advocate indicate his

right hand below wrist was in bandage. He meant to say that, it was, therefore, difficult for A/1 Raisoddin to hold knife and inflict blow therewith. No such questions were put to the doctor, who examined A/1 Raisoddin. It is also not the case of the defence that A/1 Raisoddin suffered the injury in the very incident for making out a case of right of private defence or the case that prosecution to have failed to explain the injury on his person. It was his case that, deceased Azhar and P.W.4 Masiyoddin had assaulted him with a spade by 5.30 p.m. i.e. the same day before the offence in question. Both of them were prosecuted as well. They have been acquitted of the charge. There is no appeal against acquittal. Be that as it may. It is not at all the case of the appellants that A/1 Raisoddin suffered the said injury in the incident in question so as to make out a case under any of the exceptions to Section 300 of Indian Penal Code.

48. The case is based on two eye witnesses. First is the informant Khijar (P.W.3). He claimed to have been present at the cattle shed when the incident took place. In the very incident, his real brother died. His father too suffered grievous injury. It should have been natural on his part to intervene in the incident to save his father and real brother as well. Had all

the appellants and the deceased accused really been there armed with respective weapons, there was no reason for them to spare the informant Khijar as well. He did not suffer even a scratch. The incident took place little past 6.00 p.m. He claimed to have accompanied the injured to the hospital. He, however, did not report the matter to the Police Outpost on the premises of the Civil Hospital. The F.I.R. has been lodged by 2.00 a.m. i.e. 8 hours after the incident. There is one more startling fact. The informant P.W.3 Khijar did not understand Marathi. He would converse only in Hindi or Urdu. According to him, he gave the information in Marathi language. When he was called upon to read out the F.I.R. (Exh.77), he expressed his inability to read it out. The police officer who recorded the F.I.R. has not been examined. As such, there is nothing to indicate that the F.I.R. records that it was read over to him as it is (i.e. in Marathi) and he affirmed it to be true and correct. Moreover, both the injured had suffered grievous injuries. There was pool of blood at the crime scene. Then it's difficult to believe his case that when he took both the injured to hospital in autorickshaw, not a drop of blood fell on his clothes.

49. It is not that no incident as has been alleged, did take place. There is now-a-days tendency to implicate each

and every person of the family in the offence. Admittedly a quarrel between A/1 raisoddin and informant P.W.3 Khijar had taken place half an hour before the incident. A/1 has suffered a grievous injury. True, we have already observed above that in the facts and circumstances of the case it was not for the prosecution to explain the same. the fact, however, remains that, the prosecution witnesses are not coming clean. They are hiding some facts.

50. Admittedly, the residential house of the appellants was not on the land. It was at Qadrabad Plot area, i.e. to the West of Parbhani city. While the land Gut No.250, where the incident took place, was at the other end. The incident in question took place within half an hour post earlier incident. There is nothing to indicate that lady appellant Gauribi had already been on the field along with her another son A/3 Akbaroddin. The appellant Gauribi was alleged to have assaulted Azharoddin on his head with an iron pipe. The post mortem examination report indicates the deceased to have not suffered any injury to his head. As such, the medical evidence rules out assault by appellant Gauribi with iron pipe. The pipe was not recovered at her instance. She is not alleged to have played any other role in the crime in question. In our view, her

presence at the crime scene even is very much doubtful, more so, on the ground of evidence of P.W.3 Khijar. The statement of other injured P.W.4 Masiyoddin was admittedly recorded 15 days after the incident in spite of he having been conscious oriented earlier. He himself has admitted to have been told about the incident by Sharifoddin. Sharifoddin was not an eye witness. Had the entire family, namely the appellants and the deceased Amiroddin (since deceased) had prearranged meeting to eliminate one and all of the family members of Gauribi's brother Masiyoddin, all of them would have come armed with deadly weapons. Admittedly, A/4 did not have any weapon in his hand. He is alleged to have assaulted deceased Azhar with fist and kick blows. The injury certificate rules out blunt trauma or any other such injury as a result of assault made by him. True, there being no independent eye witness available and the evidence of injured witness carries greater weight, here is a case of a dispute between the two parties over agricultural land located at prime place. Both the lands have N.A. potential. Possibility of involving appellant Gauribi and her another son (A/3 Akbaroddin) with an ulterior motive cannot be ruled out. To that extent, we are not relying on the evidence of P.W.4 Masiyoddin. Even we accept the evidence of P.W.3 Khijar, his evidence too is not relied on so

far as against these two appellants. In our view, the prosecution has failed to bring home the charge against them beyond reasonable doubt. Based on such quality of evidence, the Trial Court ought not to have convicted both of them with the aid of Section 34 of the Indian Penal Code.

51. So far as regards A/1 Raisoddin is concerned, we rely on the evidence of P.W.4 Masiyoddin. He has committed murder of his cousin Azhar. The Trial Court has, therefore, rightly sentenced him to imprisonment for life. It is not the case of the prosecution that A/1 Raisoddin has assaulted P.W.4 Masiyoddin, his maternal uncle. He was assaulted by the accused Amiroddin (since deceased). The injuries were on the vital part of P.W.4 Masiyoddin. Therefore, it could be said that it was a bid on his life as well. Since A/1 Raisoddin is was convicted for other offence with the aid of Section 34 of the Indian Penal Code, and admittedly he even not touched the person of P.W.4 Masiyoddin, on whose life it was a bid, we propose to interfere with the quantum of sentence imposed against A/1 Raisoddin in that regard. We, however, do not find to interfere with the conviction of the A/1 Raisoddin for the offence under Section 4 r/w 25 of the Arms Act.

52. For the reasons given hereinabove, the appeal partly succeeds. Hence the order :

O R D E R

(i) The Criminal Appeal is partly allowed.

(ii) Conviction of the appellant No.2 Raufabegum alias Gauribi w/o Mohd. Amorouddin and appellant No.3 Akbarouddins/o Mohd. Amirouddin, recorded by learned Additional Sessions Judge-4, Parbhani in Sessions Case No.41/2016 vide order dated 18/2/2021 set aside. Both of them are acquitted of the offences punishable under Sections 302 and 307 of the Indian Penal Code.

(iii) Conviction of appellant No.1 Raisoddin alias Guddu s/o Mohammad Amiroddin for offences punishable under Sections 302 of the Indian Penal Code and under Section 4 read with Section 25 of the Arms Act is maintained. However, the order directing him to undergo R.I. for two years in default of payment of fine of Rs.10,000/- for offence punishable under section 302 of the Indian Penal Code is reduced to three months.

(iv) Conviction of the appellant No.1 for the offence punishable under Section 307 of the Indian Penal Code is maintained. However, the sentence of imprisonment is reduced to rigorous imprisonment for one year and to pay fine of Rs.1000/- (Rupees one thousand), in default to suffer S.I. for one month.

(v) Conviction of the appellant No.1 for the contravention of Section 4 of Arms Act, punishable under Section 25 of the Indian Arms Act and the consequential sentence and fine with default stipulation is maintained.

(vi) Clause (7) of the operative order regarding substantial sentences to run concurrently stands unaltered.

(NEERAJ P. DHOTE, J.) **(R.G. AVACHAT, J.)**

fmp/-

Case Brief & MCQs on "Raisoddin Alias Guddu S/O Mohammad Amiroddin v. State of Maharashtra" (2024:BHC-AUG:23836-DB) is available in the eBook:

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