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Exh.No.

IN THE COURT OF SESSIONS FOR GR.BOMBAY

Sessions Case No.230 of 1999

The State
(At the instance of Meghwadi
Police Station, C.R.
No.107/98)

..Complainant

V/s.

Mohd. Kasam @ Kalya Kasam
Mehboob Badshah Khan
age-55 years, Occ.:Rickshaw
driver, residing at Badshah Chawl,
Jhula Maidan, Jogeshwari (E),
Mumbai-60

..Accused

Coram : H.H.THE SESSIONS JUDGE

V.G. BISHT

Dated : 17th July,2019
(C.R.No.19)

APP Shri V.D. More for State.
Advocate Mr.C.K. Talekar for accused.

ORAL JUDGMENT

The accused stands prosecuted for the offence punishable

under Section 302 r/w. 34 of Indian Penal Code and under Section 4 r/w. 25 of the Arms Act,1959.

2 The prosecution case in short is as under:

Informant, Gausbee Farid Shaikh resides at Sattarbhaichi wadi (Patil Wadi) alongwith her parents, brothers and sister-in-laws. Informant's uncle, namely, Mehaboob Badshah Khan also resides in neighbourhood alongwith his wife-accused Imambi Badshah (A2), accused sons, namely, Sarif Badshah (A1), Kalia Kasam Badshah (A3), Dilshad Kasam Badshah and two daughters. As informant's father have huge property, said Mehaboob and her sons are having an eye over the said property and are in habit of picking up quarrels with her father and brothers on trifle things.

3 On 22nd November,1998 the informant was chit-chatting with her parents. Other family members were also there. The prosecution alleges that at that time all the accused came there abusing her parents. The informant came out of the house and saw that her cousin Kalya Kasam (A3) was standing in front of her house armed with gupti. A3 was accompanied by his brother Sharif (A1) who was also armed with a sword. There another brother namely Dilshad was having chopper in his hand. Informant's aunt namely Imambi (A2) was having a stick in her hand. All of them were exhorting the family members of the informant to come out of the house.

4 According to prosecution, informant's brother, namely, Khaja was trying to come out of the house but was caughthold by informant's sister-in-law. However, when informant's father came in front of the door of the house, all the accused rushed to beat him. The youngest brother of

informant Noor Mohammad @ Noor came running out of the house to save his father and came in between his father and the accused. He also requested all of them not to beat his father. But A3 gave blow of gupti in the abdomen of Noor as a result of which intestine came out. It is further alleged that other accused, namely, A1 and Dilshad who were armed with sword and chopper assaulted on the person of Noor. A2 was also assaulting on the person of Noor by means of stick. When the informant intervened, she was also beaten. She raised commotion. The people gathered. All the accused then went away. Informant's brother was then rushed to Cooper Hospital where he was declared dead after examination.

5 On the basis of report of informant, Meghwadi Police Station, Mumbai registered F.I.R. No.107/98 under Section 302 r/w. 34 of Indian Penal Code and under Section 4 r/w. Section 25 of the Arms Act, 1959.

6 After committal of case to the Court of Sessions, the charge (Exh.10) was framed by my learned Predecessor. The accused pleaded not guilty and abjured guilt. It appears from the record that as present accused became absconding, the trial to that extent came to be separated. A1 And A2 came to be convicted by my Learned Predecessor. The Criminal Appeal no.367/09 preferred by A1 came to be dismissed by the Hon'ble High Court on 12th February,2016.

7 Eventually, present accused came to be arrested on 18th February,2012. The witnesses were accordingly examined who adopted their earlier examination-in-chief and later on cross-examined by the learned counsel for present accused.

8 When the present accused was questioned under Section 313 of Code of Criminal Procedure as to the incriminating circumstances appearing against him, he denied them as false, expressed ignorance and submitted that he was not present on the spot and was hospitalized prior to the incident. According to him, he is falsely implicated in the present case and that he is innocent.

9 The prosecution, in order to bring home the charge, has examined eight witnesses. They are: P.W.1 Mrs.Gausbee Farid Shaikh, informant (Exh.17A), P.W.2 Fatimabee Abdul Shaikh (Exh.25), P.W.3 Tajbano Salim Khan (Exh.26A), P.W.4 Ali Ahmad Bismillah Khan (Exh.101), P.W.5 Bashir Abubakar Shaikh (Exh.106), P.W.6 Dr.Manik Prabhakar Sangale (Exh.110), P.W.7 Ambadas Bhika Pawar, Investigating Officer (Exh.111) and P.W.8 Vasant Tamku Najarale (Exh.114).

10 Following points, therefore, arise for my determination and my findings thereon with reasons are as under:

POINTS

FINDINGS

- 1) Whether prosecution proves that deceased Noor Mohammed Abdul Sattar Khan died a homicidal death?
- 2) Whether prosecution further proves that present accused alongwith convicted accused in furtherance of their common intention caused the death of Noor Mohammed Abdul Sattar Khan by means of knife

..In the affirmative

(gupti) and thereby committed an offence punishable under Section 302 r/w.34 of Indian Penal Code? ..In the affirmative

- 3) Whether prosecution further proves that the accused was found in possession of gupti without license and thereby committed an offence punishable u/s.4 r/w. 25 of Arms Act,1959? ..Not sustainable

- 4) What order? ..As per final order

11 Mr.V.D. More, learned APP, firstly, submitted that in the instant case, the conduct of present accused must be taken note of inasmuch as after framing of the charge he became absconding. The learned P.P. then took me through the evidence of prosecution witnesses and forcefully submitted that the evidence of eyewitness clearly implicates the accused in crime. The evidence adduced by the prosecution is consistent, cogent and convincing. Even the recovery of weapon at the instance of accused is also established by the prosecution. Thus, the prosecution has successfully established the guilt of accused, argued learned APP.

12 Mr.C.K. Talekar, learned counsel for accused, vehemently criticized the approach of prosecution by contending that only interested witnesses are examined. Even the very presence of deceased and father of informant in the house at the time of alleged incident is not well established on record. The spot panchanama also does not prove that the alleged incident had taken place just outside the house of the informant.

The statements of the witnesses came to be recorded quite belatedly and moreover different versions are coming on record as to the alleged incident. Similarly, the alleged recovery at the instance of accused is also not proved in accordance with requirement of Section 27 of the Evidence Act, argued learned counsel.

13 Having regard to all these infirmities, it must be held that the prosecution has not been able to prove the guilt of the accused beyond reasonable doubt, argued learned counsel. The learned counsel also placed reliance in *Kashinath Baban Palkar V/s. The State of Maharashtra* MANU/MH/0480/1995, *State of Gujarat V/s. Rupa Ganga Ayar and Ors.* MANU/GJ/1901/2017, *Kathi Odhabhai Bhjmabhai and others V/s. State of Gujarat* SC AcqCr.J-815, *Ganesh Bhavan Patel and another V/s. State of Maharashtra* AIR 1979 Supreme Court 135, *Shailendra Pratap and another V/s. State of U.P.* SC AcqCrJ-1286, *Kailash Gour & Ors. V/s. State of Assam* 2012 CRI.L.J.1050, *Govind Krishna Jadhav V/s. State of Maharashtra* [1980 Mh.L.J.]72, *Mohan Singh V/s. Prem Singh and another* SA AcqCrJ-952, *Hasan Murtza V/s. State of Haryana* SC AcqCrJ-576 and *Rajeevan and another V/s. State of Kerala* 2003 Supreme Court Cases (Cri)751.

REASONS

Point no.1:

14 In order to prove the death of Noor Mohammed Abdul Sattar Khan, the prosecution has placed reliance on the testimony of P.W.6-Dr.Manik Prabhakar Sangle. It may be noted here that this witness was

earlier examined at Exh.39 and since the present accused was absconding, this witness was again summoned and examined at Exh.110. In his evidence this witness adopted his earlier examination-in-chief (Exh.39) in toto. Therefore, for all purposes, I will have to go back to examination-in-chief recorded by my learned Predecessor at Exh.39.

15 P.W.6 Medical Officer states in his evidence that dead body of Noor Mohd. Abdul Sattar Khan was brought at about 10.15 p.m. on 22nd November,1998 by Meghwadi Police Station. He performed an autopsy and while doing so he noted following injuries in Column no.17 of the postmortem report.

- i) transversely placed reddish abrasion of 10 cms. X 1.5 cms. on right shoulder region.
- ii) transversely placed reddish abrasion 15 cm. X 1 cm. On right mid scapular region.
- iii) Longitudinal incised wound of 5 cms. X 1 cm. X muscle deep on posterior aspect of right elbow region.
- iv) Longitudinal incised wound of 5 cm. X 1 cm. X muscle deep on posterior aspect of left elbow region.
- v) elliptical shape, longitudinal (in the plain of the body) placed incised penetrating wound of 2.5 cm x 1 cm. on left abdomen, 4 cm. lateral to umbilicus with coils of intestine protruding.
- vi) reddish irregular graze on left upper chest
- vii) linear abrasion with scab of 3 cm x 1/2 cm. on anterior aspect of middle 3rd of left leg.

viii) Irregular reddish grase on right sole at about great toe.

According to this witness, all the above said injuries were “ante-mortem injuries. The cause of death according this witness was hemorrhagic shock due to stab injury to abdomen (unnatural)”. He then proved the postmortem report issued by him at Exh.40.

16 This witness further stated that injury number V viz. elliptical shape, longitudinal (in the plain of the body) placed incised penetrating wound to umbilicus with coils of intestine protruding was on vital part and was sufficient to cause death in the normal course. The injuries (iii), (iv) and (v) were possible by chopper and gupti.

17 According to his cross-examination the elliptical injury (no.v) noted by him was possible with the weapon gupti.

18 There is nothing in the cross-examination of this witness to discredit his testimony. The nature of injuries as noted in column no.17 and more particularly injury nos. (iii), (iv) and (v) are self explanatory inasmuch as according to this witness those injuries were possible by means of chopper and gupti. The accusation against the present accused is that he had stabbed deceased in the abdomen by means of gupti. Thus, the findings of the postmortem report, the probable opinion as to cause of death and as also the possibility of injury no.(v) being caused by means of chopper and gupti, I have no hesitation in my mind to hold that the deceased died a homicidal death. Point no.1 is, therefore, answered in the affirmative.

Point no.2:

19 P.W.1 Mrs.Gausbee Farid Shaikh-informant states in her

evidence (Exh.17 and 17A) that accused is son of his uncle. The incident took place on 22nd November,1998 at about 12.30 noon. On that day she had been to his father's house to meet him. Her five brothers and their wives, mother were chit-chatting. At about 12.30 noon A1 to A3 and one more accused who died during the pendency of the case came to her house. They were abusing her parents. After hearing the abuses, her father came out of the house. A3 i.e. present accused was holding gupti while A1 was holding sword and A2 was holding danda. Accused Dilshad (since deceased) was having chopper.

20 It is her further evidence that her younger brother Noor came outside house and asked accused as to why they were abusing and on this count, the accused assaulted by means of sword, chopper and gupti. Accused Kasam (A3) firstly inflicted blow in the abdomen of Noor as a result the intestine came out. Accused Sharif and Dilshad assaulted Noor by means of sword and chopper. A2 assaulted Noor by means of danda on his chest and back. A2 also assaulted her by means of danda on her right hand and also on right ear. After assaulting her and her father, the accused ran away to their house. Her brother Noor had received severe injuries all over his body. Her mother and other brothers carried injured Noor to Meghwadi Police Station and from there to Cooper Hospital. On way to Cooper Hospital, her brother Noor died. Police recorded her complaint. Then she proved her complaint at Exh.18. She then identified the weapons viz. articles gupti, chopper, iron sword and wooden bamboo as the same weapons which were used in the assault.

21 The substantive evidence of informant needless to say is broadly in conformity with her FIR. Except minor omissions which do not

go to the root of the matter, like mentioning of specific abuses as given in the FIR, there is nothing to question her testimony. The informant has clearly spelled out in her evidence the role played by each and every accused including the present accused.

22 It may be noted here that she was cross-examined piecemeal and her first cross-examination was on 26th October, 2015 i.e. nearly after seven years of her earlier cross-examination. Thus, the minor discrepancies are bound to occur because of passage of time and inability to recollect her own case in all its finer aspects. So also prompt filing of the FIR by the informant cannot be over looked.

23 Despite searching cross-examination of the informant by the defence, nothing material could come out on record. On the other hand, certain suggestions are given to the informant which pointedly indicate the presence of accused at the residence of informant. The first suggestion given to the informant, which is also admitted by her, is that the family members who were inside the house did not come out. The second suggestion, which is denied, is that her father had gone to offer namaj (prayers) on the relevant day of incident. This suggestion shows that the accused were having knowledge that the informant's father was not in the house on the day of incident. If the accused was not there, as the defence is taken in his statement recorded under Section 313 of Code of Criminal Procedure, then how he came to know about absence of father of informant in the house is not clear. I say so because as per the defence of this accused, he was hospitalized prior to the incident and was not on the spot.

24 The third suggestion which is again denied is that after

hearing abuses, her father did not come out of the house. The last suggestion which gives severe blow to the earlier defence and is admitted by informant is that as soon as Noor came, all the four accused attacked on him at the same time and they also surrounded her father and brother Noor. Thus, in this suggestion not only the presence of accused and the father of informant is admitted, but also the assault as is alleged by the prosecution.

25 Thus, the evidence of informant vis-a-vis her FIR is quite inspiring and the same is furthered in the light of suggestions, as noted above, given by the defence. Let me find out what other witnesses have to say in respect of the incident.

26 P.W.2 Fatimabee Abdul Shaikh states in her evidence (Exh.25) that on 22nd November,1988 at about 11.00 a.m. she was present in the house. Her daughter Gausabee i.e. informant had come to her house. They were chit-chatting. At that time, accused, namely, Sharif, Kasam Kaliya (present accused), Dilshad and Imambee came there. They started abusing. Kaliya Kasam i.e. present accused uttered “chinal bahar nikal, tere beta ko marneka hain”. Therefore, she and informant came out of the house. They saw that Kaliya was having gupti in his hand, Dilshad was having chopper and Imambee was having wooden stick in her hand. It is her further evidence that her son Noor Mohd. came out of the house. Kaliya Kasam i.e. present accused assaulted him with gupti in his stomach, Dilshad assaulted with chopper on his back and Imambee assaulted by wooden stick. Her son Noor Mohd. sustained bleeding injury and was taken to Cooper Hospital where he was declared dead before admission.

27 I have already pointed out from the evidence of P.W.1 informant about the absence of abuses given by present accused as is alleged in the FIR. Although this witness has deposed about the abuses, but the same is not supported by P.W.1 i.e. her daughter informant. There is one minor discrepancy appearing in the cross-examination of this witness. Her cross-examination shows that her husband had already left the house for offering namaz prior to five minutes of abusing incident. This discrepancy will not in any manner come to the rescue of the defence inasmuch as as pointed out by me the presence of father is duly admitted by the defence while giving suggestion to the informant in cross-examination. It must be borne in mind that the evidence of this witness who is none other than the informant's and deceased Noor's mother has supported the version of the informant on the point of assault at the hands of present accused by means of gupti.

28 Next witness is TajbanoSalim Khan, daughter-in-law of P.W.2. P.W.3 states in her evidence (Exh.26 & 26A) that on 22nd November,1998 they were gossiping in their house. At about 12.30 p.m. they heard shouting of abuses from outside. Kaliya Kasam (present accused) was abusing in the words “khaja Bhadwa bahar nikal”, “Fatima chinal abjhar nikal” and “Main Kaliya Kasam aya hun.” It is her further evidence that father-in-law came out of the house in courtyard. Kaliya Kasam (present accused) was holding gupti in his hand, Sharif sword, Dilshad chopper and Imambi wooden stick in her hand. Accused were instigating her father-in-law by giving abuses. Her brother-in-law Noor Mohd. went out of the house to pacify them and at that time Kaliya Kasam (present accused) assaulted him with gupti in his stomach, Dilshad stabbed him with chopper

and Sharif with sword. Imambi assaulted him with wooden stick. When her sister-in-law went to rescue him, she was assaulted by Imambi by wooden stick. Her brother-in-law was then taken to the police station by her sister-in-law and the persons gathered there and from there to Cooper Hospital. Her brother-in-law died due to beating and assault given by the accused.

29 The evidence of this witness is also in line with the evidence of P.W.1 and P.W.2. In the cross-examination this witness remained intact. There is nothing material in her cross-examination which can be read in favour of defence.

30 This brings me to P.W.4, an eyewitness and a neighbour of accused and prosecution witnesses. P.W.4 Ali Ahmad Bismillah Khan states in his evidence (Exh.28 and 101) that at the relevant time he had been to the house of one plumber by name Atif Batala to meet him. At about 11 to 12 hours Kasam (present accused), Sharif, Billu and their mother were present there. Sattarbhai was going for namaj. Salim and Kasam were abusing Sattarbhai in filthy language. Billu was holding sword, Salim was holding chopper and Kasam (present accused) was holding gupti. The scuffle started between them near the house of Sattarbhai in the open place. After hearing the abuses, Noor came out of the house.

31 It is his further evidence that mother of Salim gave stick blow on the head of Noor. Sharif assaulted Noor by chopper, Kasam (present accused) assaulted Noor in his abdomen. After assaulting Noor on his hand by chopper, Sharif went to chowky. He followed him. Sharif was telling to the police that they should go immediately to the spot otherwise

they will kill his brother. According to this witness, Sharif came there after assaulting. He then took police to the spot. Sharif came to be arrested on the spot. Billu and Kasam had run away from the spot. His further evidence is that he saw Noor lying in an injured condition. He had injury in his abdomen and was taken to police chowky in rickshaw.

32 Whatever this witness has deposed in respect of Sharif going to police chowky and his narration to the police about the incident has come by way of omission as the same is not part of his statement recorded under Section 161 of Code of Criminal Procedure and duly proved by P.W.8 Investigating Officer in his cross-examination. Merely because some part of his evidence has come on record by way of omission does not mean that the whole testimony of this witness should be brushed aside particularly when he knows both the parties and is from neighbourhood. It is also pertinent to note that the version of this witness that the present accused was armed with gupti and had assaulted Noor in his abdomen has gone virtually unchallenged in the cross-examination. Nothing is brought in his cross-examination to falsify his testimony or the reason why he has deposed against the present accused.

33 All the testimonies of the above noted material witnesses if taken together, it must be said that they have deposed in unequivocal terms regarding the incident. It is in concurrence with the prosecution case that the deceased (Noor Mohd.) was assaulted in his abdomen by the present accused by means of gupti. All these witnesses have attributed the role of other accused as well, who have already been convicted by this court and upheld by Hon'ble High Court. Additionally, the evidence of P.W.6 Medical Officer who performed an autopsy clearly goes to show that

injury no.v on the person of deceased was sufficient to cause death in the normal course.

34 The submission of learned counsel for accused, that the prosecution has examined all the interested witnesses and no independent witness is forthcoming is beyond acceptance for the reason that the presence of P.W.1, P.W.2 and P.W.3 was quite natural as they are family members of the deceased and had come out of the house at the time of the incident. As far as P.W.4 is concerned, he is also a neighbour of accused as well as prosecution witnesses. Therefore, in absence of anything to the contrary, his absence also cannot be doubted.

35 I may point it out here that approach of court to seek corroboration by independent evidence is only a rule of prudence and not an inflexible requirement of law having universal application in all cases. I have carefully gone through the judgments given in ***Kashinath Baban Palkar (Supra)*** and ***Hasan Murtza (Supra)*** and with due respect I say that the factual situation is quite distinguishable vis-a-vis the case in hand and therefore, have no applicability to the case in hand.

36 The next important witness examined by the prosecution is on the point of recovery of weapon of offence at the instance of present accused. Here, it is necessary to keep in mind the submissions advanced by the learned counsel for accused that the alleged discovery panchanama being a joint statement is not a discovery in the eyes of law. To buttress his submission, the learned counsel also placed reliance on the observations of our Hon'ble High Court in case of ***Govind Krishna Jadhav V/s. State of Maharashtra (Supra)*** and as also of Hon'ble Gujarat High Court in case of ***State of Gujarat V/s. Rupa Ganga Ayar and Ors.***

(Supra). It has been held by the Hon'ble High Courts that a joint statement made by two or more accused persons under Section 27 of the Evidence Act is not admissible and such evidence relating to discovery alleged to have been made pursuant to a joint statement made by more than one accused has to be totally excluded from consideration.

37 Whether in the present case infact there exists a situation wherein joint statements of two or more accused were recorded by Investigating Officer will have to be ascertained before ruling out the admissibility of the evidence on the point of recovery.

38 P.W.5 Bashir Abu Bakar Shaikh states in his evidence (Exh.106) that on 30th November,1998 he was called by Pawar Saheb at Meghwadi Police Station to act as a panch for recovery of weapon which was concealed by accused Kasam. It is his further evidence that Kasam (present accused) was present in the Police Station and showed his willingness to show the place where he had concealed the weapon. He took him, Pawar saheb, Naik shaeb and one constable in a police vehicle to Colaba plot/Bandra plot. The vehicle was stopped at Subhan Allah beef shop. The accused took them to Machhli chawl/lane and then took them to a room where he had concealed the weapons. He dug the drainage and took out gupti, chopper, sword and one stick. He also took out blue checks shirt, one blue brown lungi, one biscuit colour checks shirt, one black pant, one belt and one saree. All these articles were sealed and labelled in Police Station. He then proved the contents of panchanama at Exh.38. The witness also identified gupti, sword, chopper, wooden bamboo and other articles.

39 From the bare reading of examination-in-chief of this witness, it is clear that it was only the present accused who had given the disclosure statement relating to the offence and then the present accused led this witness and other staff members of police to the place from where he took out all those weapons, as a result of which the said weapons came to be seized. The whole examination-in-chief does not give semblance that the disclosure statement was given by more than one accused. In the cross-examination, a specific question was put to this witness as to whether both the accused had simultaneously disclosed or they disclosed one by one or how did it happen? This witness answered that only one accused Kasam (present one) had disclosed.

40 Now, if the panchanama at Exh.38 is read minutely and carefully, then it would show that the disclosure statement was only given by the present accused and there was no joint statement as is alleged by learned counsel for accused. Therefore, the benefits of decisions relied on by learned counsel for accused, cannot be extended in favour of accused.

41 Apart from above, the weapon of offence viz. gupti is duly identified not only by this witness but also by P.W.1 to P.W.4 in their substantive evidence.

42 The prosecution has also filed on record C.A. reports at Exhs.54, 59, 60/1 to 60/4. The C.A. report at Exh.54 shows that human blood was found on the clothes of present accused. Similarly, the weapon of offence viz. gupti was having human blood although the blood grouping remained inconclusive.

43 Thus, the oral and documentary evidence discussed so far clearly indicate that the present accused had authored the death of deceased Noor Mohd. in furtherance of common intention alongwith other convicted accused.

44 The learned counsel for accused, during the course of arguments, also impressed on the point of delay in recording the statement of prosecution witnesses. The incident took place on 22nd November,1998. I have already noted that the FIR was promptly lodged by informant on the very day of incident. Statement of P.W.2 came to be recorded on 24th November,1998, that of P.W.3 on 23rd November,1998 and lastly P.W.4 on 22nd November,1998. Apparently, there does not appear to be inordinate delay in recording the statements of prosecution witnesses. Therefore, there is no merit in the argument advanced by learned counsel for accused and therefore, same needs to be rejected.

Point No.3:

45 The prosecution has also alleged that accused has contravened Section 4 r/w. 25 of the Arms Act. However, on going through the charge-sheet, it is seen that except slapping Sections of the Arms Act, no documentary evidence is produced on record in order to prove breach of Section 4 r/w. Section 25 of the Arms Act. Even the testimony of P.W.7 Investigating Officer nowhere shows as to how the relevant provisions of the Arms Act,1959 came to be levied against accused. In such circumstances, in my considered opinion, there was no material on record for my learned Predecessor to frame the charge under Section 4 r/w. 25 of the Arms Act,1959 or for that matter any other Section of the Arms Act, 1959.

46 In view of above discussion, there remains no doubt that the present accused has committed offence punishable under Section 302 r/w. 34 of Indian Penal Code. (At this stage the dictation of judgment is suspended and accused is called upon to hear on the point of sentence).

17/07/2019

(V. G. BISHT)
Sessions Judge,
Gr.Bombay.

47 Heard accused in-person. Heard Mr.C.K. Talekar, learned counsel for accused. Both of them submitted that a lenient view may be taken while awarding the sentence.

48 Learned APP, on the other hand, submitted that having regard to the facts and circumstances of the case, maximum punishment prescribed by the provision needs to be awarded.

49 Taking into consideration over all circumstances of the case, in my considered opinion, this is not a rarest of rare case where capital punishment is warranted. Sentence of life would subserve the end of justice.

50 In view of this finding, I pass the following order:

ORDER

Accused Mohd. Kasam @ Kalya Kasam Mehboob Badshah Khan is hereby convicted under Section 235(2) of Code of Criminal

Procedure for the offence punishable under Section 302 r/w. 34 of the Indian Penal Code and sentenced to suffer imprisonment for life and also to pay fine of Rs.10,000/-, in default to suffer rigorous imprisonment for one year.

Accused is in jail from 25th November,1998 to 3rd August,2002, 31st August,2005 to 21st January,2006 and 17th February,2012 till today. Therefore, set off be given under Section 428 of the Code of Criminal Procedure for the period undergone by him and same may be considered while considering the commutation of sentence under Section 433A of Code of Criminal Procedure.

After deposit of the fine amount by the accused, it be given to the mother of deceased viz. Fatimabee Abdul Shaikh.

All the marked and unmarked muddemal except Article nos.1 to 3 be destroyed after appeal period is over.

Article nos.1 to 3 be returned to District Magistrate, Mumbai for disposal according to law after appeal period is over.

Copy of judgment be given to accused free of cost forthwith.

17/07/2019

(V. G. BISHT)
Sessions Judge,
Gr.Bombay.

Dictated on : 17/07/2019
Transcribed on : 17/07/2019
Signed by HHJ on : 17/07/2019

CERTIFIED TO BE TRUE AND CORRECT COPY OF THE
ORIGINAL SIGNED JUDGMENT/ORDER

Name of Stenographer: Mrs.Aruna S. Jayade

Upload date and time: 18/07/2019 (3.00 p.m.)

Name of the Judge	H.H.THE PRINCIPAL JUDGE Shri V.G. BISHT(C.R.No.19)
Date of Pronouncement of Order	17 th July,2019
Order signed by P.O. on	17 th July,2019
Order uploaded on	18 th July,2019