



**TRIAL ADVOCACY PROBLEM:**

**State of Maharashtra vs. Vishal Vivek Sheth**

*In the Court of the Principal Sessions Judge, Greater Bombay.*

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## EXHIBIT 1

### FIRST INFORMATION REPORT

(under Section 154 CrPC)

1. District: *Central Mumbai* P.S: *Shivaji Park Police Station* Year: *2017*  
FIR No: *132 of 2017*  
Date of occurrence: *11<sup>th</sup> August 2017*
2. Act: *Indian Penal Code, 1860* Sections: *307, 363*
3. Occurrence of Offence, Day: *Friday, 11<sup>th</sup> Aug 2017* Time: *4.30-5.00 pm*
4. Information recorded at PS: Date: *11<sup>th</sup> Aug 2017* Time: *7.00 pm*  
*General Diary Reference Entry No: 1067/2017*  
Information recorded by: *Asst. Police Inspector V. Sharma*
5. Type of information: Personal \* Written / Oral: *written*
6. Place of Occurrence: Direction / Distance from PS: *Shivaji Park main entrance on Old Cadell Road Mumbai, 0.4 kms from Shivaji Park Police Station*
7. Informant Name: *Mrs. Philomena Gavin DeSouza*  
Father's name: *Claudius Fernandes*  
Date of birth: *17.April.1950* Nationality: *Indian*  
*Occupation: Retired School Principal*  
Address: *Flat 2, Parkway View, Ranade Road extension, Shivaji Seaface Road, Shivaji Park, Dadar (W), Mumbai.*
8. Basis on which FIR is lodged: *Information provided by Mrs. Philomena Gavin DeSouza*

9. Details of Known / Unknown / Suspected accused with particulars:

*Known person – Mr. Vishal Vivek Sheth*

9. Reasons for delay in reporting by informant: - *no delay, informed immediately*

10. Particulars of injuries sustained: *As per Medical Report*

11. Particulars of the post mortem report: *Not applicable*

12. Inquest report / Unnatural death case no. if any:

*FIR read over to the complainant/informant, admitted to be correctly recorded and a copy given to the complainant/informant free of cost.*

Signature/thumb impression of complainant/informant: *Signed Mrs. Philomena Gavin DeSouza*

13. Signature of Office-in-charge, Police station: *Signed API Sharma*

14. Date and time of despatch to the Court: *12th Aug 2017 at 11.00 pm*

## **EXHIBIT 2:**

### **Statement of the Complainant u/s. 154 of the Code of Criminal Procedure, 1973.**

#### **PW 1 - Mrs. Philomena Gavin DeSouza (Complainant)**

Age: 67 years

Occupation: Retired School Principal

Address: Flat 2, Parkway View, Ranade Road extension, Shivaji Seaface Road,  
Shivaji Park, Dadar (W)

**Statement:** I am a widow and the natural and legal guardian of my granddaughter Anamika Vishal Sheth. I had one daughter Maria Vishal Sheth (now deceased) and one son Sebastian who resides with his family in Qatar. My daughter Maria was married to her college friend Vishal Sheth in September 2012 against our wishes, when she was only 21 years old. Soon after her marriage, she complained of ill treatment by her in laws and also episodes of physical abuse by her husband. Their daughter Anamika was born on 3rd January, 2016.

She kept complaining to me also but I never used to take her seriously and explained that all couples have a hard time after they have their first child. It is a big adjustment. She often told me that Vishal never used to spend time with the baby, was always "working" but often he would come home very drunk, late at night, smelling of ladies perfume. He ruined my daughters' life. She was such a gentle person, hardworking and enjoyed her job at Lintas Ad Agency. Maria was driven to suicide by the Sheth family members. My daughter Maria, was found dead after taking an overdose of sleeping pills on 8th November last year.

Anamika has been with me for the last 8 months ever since I was granted legal guardianship on the grounds that her father Vishal is incapable of taking care of

Anamika on account of his bad habits. The Court has allowed visitation rights to Vishal only in my presence, once in every six months. Today I have not brought a copy of the Court Order granting legal guardianship of my granddaughter Anamika to me. I shall produce the same subsequently before you.

Anamika is about 20 months old now, and has been looked after by me since she lost her mother as her father Vishal is just not interested in his daughter or her well being and would just inquire about her once every three months or so. I have kept Shantabai to look after Anamika, because at my age it is difficult for me to run after a toddler. Shantabai takes her to the park nearby every evening to play. Shantabai is very trustworthy and loves this baby as if she were her own grand-daughter. I have Anamika on a regular schedule so that her life can be as normal as possible under the circumstances. Shantabai takes Anamika everywhere by walking her in her stroller. Every evening they leave home for the park at about 4.00-4.15 pm and return before it gets dark, by about 6.00-6.30 pm after which Anamika bathes, eats her dinner and then plays with me till I put her to bed at 8.30 pm.

On Friday, 11<sup>th</sup> August 2017, some people were coming to see us for dinner so I suggested that Shantabai return a bit earlier from the park so that I could get Anamika into bed before the guests arrived. She came and met me before leaving, I remember it was about 4.15 pm. At about 4.45 pm, I got a missed call from Shantabai's phone. When I called her back, the phone was answered by some man, who said he had been calling me since I was the last dialled number on her phone. I was worried and asked to speak to her. He told me that she had been attacked and was lying on the road adjacent to the park. He had called the police and was waiting for their arrival. I was frantic. I asked him about the baby...he said there was no baby but only an empty stroller. He said he was

walking when he heard her screaming and crying and by the time he reached her to help her she was lying alone on the floor bleeding from her neck. I was terrified and kept asking about Anamika but he insisted that there was no baby there and only spoke about Shantabai. He told me that the police were on their way, and suggested I get to the police station as soon as possible and he would meet me there. In my panicked state, I forgot to ask him his name. He said Shantabai was being looked after by the pedestrians and after the police came to the spot she would be shifted to a hospital. After that, no matter how much I tried to ring back, nobody answered the phone. I was terrified about the baby having been kidnapped and ran to the police station with my driver. When I reached Shivaji Park Police Station at about 5.20 pm we were told that the officers were on their way back and would be in shortly. As I was rushing out of the police station to go to the park and see the situation for myself, the I.O. in charge Insp. Padmanabhan arrived at the police station at around 5.30pm.

I explained to Inspector Padmanabhan the circumstances in which I had visited the police station and kept asking him about baby Anamika. He said that he too had not seen any baby at the scene of the incident but had found an empty stroller there with some toys in it. He showed me a bag of toys he found and I confirmed that these were Anamika's sand toys. I explained to the Inspector that Vishal, Anamika's natural father, had been harassing me to meet Anamika, take her home with him to spend a few days with his daughter, and that I therefore suspected that he had kidnapped the child.

I explained that Vishal had been sending me numerous letters since May 2017 asking for access to Anamika but I refused to let him see her as the Court has granted me sole legal guardianship. I told the Inspector I suspected him of kidnapping Anamika. The Inspector asked me for the address and phone number

of Vishal, which I gave. I asked if we could go with him to get Vishal but he refused, stating it was now a police matter. He informed me that my servant Shantabai was grievously hurt and was bleeding profusely from the neck, because of which she was admitted by the Police to Hospital. He informed me that they would look for CCTV footage from the street cameras on Cadell road, and meanwhile asked me to register an FIR so that the investigation could commence. He comforted me and said that they would do their best to save Shantabai's life and get the baby back. He then left me with API Sharma who said he would record my statement. Accordingly, I have given my statement to the Police. The statement is read by me and I find it correctly recorded as per my say.

*Sd/-*

*Philomena Gavin DeSouza*

*Sd/-*

*API Sharma*

### **Statements under Sec. 161 Cr. P.C.**

#### **Further Statement of Mrs. Philomena Gavin DeSouza recorded on 14th August, 2017.**

Further to my Complaint recorded by API Sharma on 14th August, 2017, I have to state as under:

On Monday morning, 14<sup>th</sup> August, 2017 at 7.15 am, the doorbell rang at about 7.00 am in the morning and since Shantabai was still in Hospital, I opened the door, thinking it was the car cleaner returning the car keys. I was shocked to see Anamika strapped in a brand new stroller, outside the main door. Near the stroller was a cloth bag containing a ball, a brown teddy bear and some building blocks. Anamika was sleepy but seemed unharmed and quite happy. Her clothes were new, her shoes were new and she looked fresh and clean. I rushed out of the

building but could not see anyone suspicious. I immediately called I.O. Padmanabhan of Shivaji Park Police Station on his mobile number, and informed him of Anamika's return. He called me to the Police Station to record my statement. I cannot say who and how Anamika was returned to my house on 14th August, 2017, and reiterate that I suspect her father Vishal Sheth's hand in her disappearance. Today I am producing a Copy of the Court Order dated 5<sup>th</sup> December, 2016 granting legal guardianship of my granddaughter Anamika to me. I.O. Padmanabhan also came to my house thereafter, and made inquiries, but could not collect any useful information.

My statement was recorded by I.O. Padmanabhan on 14th August 2017, was read over by me and is correctly recorded.

**PW 2 – Ms. Shantabai Kamble**

Age: 50 years                      Occupation: Babysitter

Address: Flat 2, Parkway View, Ranade Road Extension, Shivaji Seaface Road,  
Shivaji Park, Dadar (W).

**Statement:** I have been working for Mrs. DeSouza since the last 5 years. I joined her after her husband passed away as she needed full time live in domestic help. I became her housekeeper. Mrs. DeSouza had one daughter, Maria who was married to Vishal Sir and who expired at the end of last year by committing suicide due to an unhappy marriage. Mrs. DeSouza blamed Vishal Sir for her daughter's death and never allowed him to meet his daughter Anamika, who was brought under very sad circumstances some months ago to look after. On several occasions, Vishal Sir has come to our house insisting that he take baby Anamika to his house to meet his parents. Mrs. DeSouza becomes very angry and keeps telling him that even over her dead body she will not allow him to take Anamika with him. I have heard Vishal sir also shouting and threatening that he will take



Anamika from under Madam's nose and no Court can stop him from taking his daughter. Anamika lives with us and madam asked me to switch my duties to only taking care of Anamika, and she hired another full time maid to look after the house. I love little Anamika dearly. I take very good care of her, like she is my own baby.

On 11th August, 2017, Madam had invited some people for dinner and she asked me to return from the park a little bit earlier. At around 4.15 p.m., I took Anamika in the stroller, which I always do, because it is walking distance from the house and she likes to be outdoors.

I was pushing her and carrying the sand toys bag. She likes to play in the children's park inside Shivaji Park. She enjoys being with other children. We had crossed over onto the pavement and were on our way to the front entrance of the park, near the statue area, when a huge black car came speeding down the road. I jumped back from the noise of the screeching tyres, I was a little startled. Before I could register anything, the back door of the van rolled open, a man in a mask jumped out. I could only see his eyes and I was frozen with fear. I am unclear about the details but I remember being terrified as I saw the masked man holding a sharp scissor and coming at me. Before I could react, I felt sharp pain of the cut and realized I had been stabbed in the neck and I fell to the ground. I must have let go of the stroller in shock, and then the next thing I knew was that Anamika was removed from the stroller and the car had driven away. . I remember a large crowd gathered around me and people were shouting in loud voices. I also was screaming and crying for help before I blacked out.

I remember cold water being splashed on me and I was in terrible pain and bleeding profusely. Some man told me to stay calm. He said he was getting help. He tried asking me some questions but I could not answer. Then the police came and I was brought to the Hinduja Hospital. I was in ICU for 5 days after surgery was performed and remained in Hospital for 10 days thereafter. Mrs. DeSouza bore all my hospital expenses.

On being asked by you, I state that I will not be able to recognize the eyes of the person wearing the mask as the entire attack on me and kidnap of Anamika happened very quickly and I was terrified to note any feature of the assailant. I also did not notice the registration number of the car, all I know is, it was a big car and it was shiny black.

Since the man wearing the mask alighted from the back door of the car, I presume there was a driver who was driving the car. I however did not see the driver's face. I do not think there was anybody else in the vehicle, but I cannot be sure because it was all too fast and the windows were dark.

On being asked by you I state that, I did not notice anyone following us when we left the house. On being asked to describe the scissors used to stab me, I say they were of steel and had fairly long pointed blades. I may be able to identify the scissors if shown to me.

On being specifically asked I state that I cannot say for certain that the masked man was Vishal Sir, but I am fairly sure that other than him nobody else would be interested in kidnapping Anamika. I did come to know from Mrs. DeSouza that Anamika had been found on our doorstep on 14th August in the morning.

Thereafter, Mrs. DeSouza brought Ananmika to Hospital to see me on one visit 2-3 days after her return. I tried to question Anamika on the identity of the person who had taken her away, but being an infant she kept saying "u-cle" and showed me a toy bear I had not seen before.

My statement was recorded on 20th August, 2017, it was read over to me and it is correctly recorded.

**PW 3 – I.O.(Inspector V. Padmanabhan):** Shivaji Park Police Station, Dadar (W)

**Statement:** I was at the police station on 11<sup>th</sup> Aug 2017 at 5 pm when I received a call from my API Sharma requesting me to come to the western side of Shivaji Park where there had been an incident to which he had responded. When I reached there a crowd of people had gathered around a woman who appeared to have been attacked in the neck with a scissor, which was lying on the ground next to her. There were bloodstains on the blades of the scissor. There was also an empty baby stroller lying about 4 feet from her. I asked her what had happened but she was unable to answer coherently and seemed to be in shock and losing a lot of blood. I asked two constables who had accompanied me to take her to Hinduja Hospital casualty for urgent medical attention. I asked API Sharma to question people who may have witnessed the attack but nobody came forward. One gentleman Mr. Nandkumar Bhat came to speak with me. He had already been talking to API Sharma. He said he had heard the victim's cries for help and even-though he had already gone past this area, he turned back and rushed to help her. When he realized she was seriously injured he called 100 to ask for police help. He said he used the victim's mobile phone to call the last dialled number and try and find out who she was or inform somebody of her state. The last number was a lady called 'DeSouza madam' and that the victim seemed to have been an employee of this DeSouza Madam. I asked Sharma to complete processing the scene while I returned to the police station. When I reached the police station, Mrs. Philomena DeSouza was already in the station. She was very disturbed and demanded to know where the baby was. I told her there was no baby at the site but just an empty stroller, and that we had only met the injured lady whom we had sent to Hinduja Hospital for medical attention as she was severely injured. Mrs. DeSouza identified the injured lady as her maid Shantabai Kamble and said that she had been taking her grand-daughter Anamika for the evening outing at 4.15 pm – as was their usual routine. Mrs.

DeSouza insisted that the baby had been kidnapped and that we should register an FIR. I asked her to explain why she thought the child was kidnapped. She explained to me that her daughter had died last year and after that the baby Anamika was given to her as the legal guardian because the baby's father, one Mr. Vishal Sheth was deemed to be unfit to parent the child. Mrs. DeSouza stated that this Mr. Vishal had been bothering her for access to the child but she had denied him permission to interact or see the child, which is why she was now suspecting that the man had come and kidnapped the child. I asked her for Mr. Vishal's address so that I could go to that location and question him. She gave me the address. I informed Mrs DeSouza that I would keep her informed of any developments in the investigation and gave her my mobile number in case she needed to reach me over the weekend, since I was off duty. I left my assistant API Sharma to register her FIR and I proceeded to the residence of Mr. Vishal. On the way I called his mobile number which was provided to me by Mrs. DeSouza. The number was unreachable, so I continued to the Breach Candy Apartments address. When I reached the residence, I met the security guard and proceeded up to the said apartment, flat # 1501 on the 15<sup>th</sup> floor. We rang the doorbell repeatedly, but there was no answer. I made inquiries with the neighbours in flat # 1502 & 1503, but nobody seemed to know where Mr. Vishal had gone or when he would return. I left word with the neighbours and the security guard of the building to inform Mr. Vishal to contact me at Shivaji Park Police Station as soon as he returned. Upon making inquiries with the security guard I was informed that Mr. Vishal had 2 cars; 1 Silver Honda City and 1 Black Renault Duster, however both the cars were not found parked in the parking slots allotted to him. The watchman also informed me that on the same day Mr. Vishal had left the Building at about 3 p.m. with a small bag in his hand, but he was not sure as to whether he had left in the Honda or the Renault car. We returned to the police station and I asked my assistant to speak to the traffic headquarters to

requisition footage from the CCTV cameras at the pedestrian crossing signal in front of Shivaji Park. It was about 8.00 pm at night so I went to Hinduja Hospital to speak with the injured victim again and ask her for further information. When I reached the Hospital I was informed that the injured lady Shantabai was in ICU and unable to give her statement. I was informed by the doctor on duty that she would require emergency surgery. On 12th August I tried to contact Mr. Nandkumar Bhat to record his statement but the contact number he had given me was continuously unreachable. In the follow-up investigation API Sharma brought footage from the street cameras on Cadell Road, however, we realised that the camera had stopped functioning, as the last footage saved was of 9th August at 5:21 am. On 12th August, I revisited Breach Candy Apartments and found that flat #1501 was still locked and newspapers had collected on the door. Upon making inquiries with the watchman I was informed that Vishal Sheth had not returned. I obtained the office address of Vishal Sheth from his neighbours. Upon calling the office of Vishal Sheth in Mafatlal Towers, Nariman Point, at about 3.10 p.m., I got a recorded message that the office was closed.

On Monday morning, 14<sup>th</sup> August, 2017 at 7.15 am, I received a phone call from Mrs. DeSouza. She was very excited and upset at the same time. She said that her missing grand-daughter had been 'returned' at 7.00 am in the morning. She asked me to come and meet her. I proceeded to her residence at Parkway View on the ground floor. She explained to me that the doorbell rang at about 7.00 am in the morning and since Shantabai was still in Hospital, she opened the door, thinking it was the car cleaner returning the car keys. She said she was shocked to see Anamika strapped in a brand new stroller, outside the main door. Near the stroller was a cloth bag containing a ball, a brown teddy bear and some building blocks. Anamika was sleepy but seemed unharmed and quite happy. Her clothes were new, her shoes were new and she looked fresh and clean. We questioned

the watchman but he said he had not seen anybody come into the building with the stroller. He said he comes on duty at 6.30 am but then goes to change and have a cup of tea before starting work at 7.00 am. I accompanied Mrs. DeSouza outside her main entrance but found nothing out of the ordinary near the main door. Mrs. DeSouza once again repeated that she suspected that the father, Mr. Vishal Sheth, had a hand in this and that I should arrest him. Once again, I tried to reach Mr. Vishal by phone but the number was unreachable. I decided to visit Mr. Vishals home again. I reached Breach Candy apartments by 8.40 am and I was accompanied up to flat # 1501 on the 15<sup>th</sup> floor by the building security. When I rang the doorbell, a man answered the door. I asked for Mr. Vishal Sheth. He identified himself as Vishal Sheth. I explained to him that I needed to question him on his whereabouts between 11<sup>th</sup> Aug and 14<sup>th</sup> August 2017. He claimed he had been unwell over the weekend and he had not gone anywhere. Since he was obviously not telling the truth and gave no satisfactory answers for his disappearance and my inability to reach him by phone, I felt he may be hiding some information so I asked to search his house to which he readily agreed. Upon searching the house nothing incriminating was found. However, upon search of a blue overnight bag lying on the sofa in the Hall, I found a small toy monkey in it. Upon making inquiries with Vishal on the toy, after much thought he stated that he had bought the same to gift to a colleague's child. I asked him for the contact details and residential address of his driver, but he stated that he was unaware of the same. Not being satisfied with his replies, I placed him under arrest.

I recorded the further statement of Mrs. Philomina DeSouza, statement of Shantabai Kamble, collected the medical reports and thereafter filed the chargesheet u/s 307 & 363 IPC.

**EXHIBIT 3:**

**SCENE OF OFFENCE PANCHNAMA**

**NB. This document shall be taken as proved by the Prosecution.**

Pancha No. 1

Date: 11.Aug.2017

Ms. Ankita Jadhav, age 32 years

Residing at: Flat No. 1901, Orchid Terrace, Five Gardens, Wadala.

Pancha No. 2

Mr. Santosh Patil, age 65 years

Residing at: 139 Old Cadell Road, Near Catering College, Dadar (W).

We the above-named panchas were called by API Sharma at about 4.50 p.m. to the main entrance of Shivaji Park, near the Shivaji Maharaj Statue on Cadell Road. We were on our habitual evening walk at Shivaji Park. He informed us that one lady had been attacked by a person in a vehicle and requested us to act as panchas of the scene of offence. We agreed to act as panchas.

There was a crowd of people standing near the main entrance to the park when we approached. There was a lady, whose name was given by API Sharma as Mrs. Shanta Kamble who was lying injured on the footpath exactly in front of the main entrance to Shivaji Park, on Cadell Road. The lady was on her back, bleeding profusely from a wound in her neck. A scissor was lying on the ground next to her. There were bloodstains on the blades of the scissor. There was also an empty baby stroller lying about 4 feet from her. She was crying and mumbling. There were people surrounding her. API Sharma asked one man to bring some cold water. API Sharma tried to ask her what had happened but she kept on stating in marathi "where is Anamika?" and "I am in pain". Meanwhile, PI Padmanabhan came to the spot and joined us.

The man returned with a bottle of water and splashed the same on her face but she could not respond to any questions which the police officers asked her. PI Padmanabhan directed two constables who had accompanied him to the spot to immediately take the lady to the nearby Hinduja Hospital Casualty Ward for immediate medical attention. The time was about 5.15 pm.

The police then started to examine the area. They collected the scissor lying near the lady. The said scissor was a steel scissor which sharp blades about 12 inches long. On both the blades of the scissor, the Police showed us blood stains. The said scissor was wrapped in newspaper and put in a brown envelope, which the police pasted shut and made us sign the same. API Sharma also put his dated signature on the envelope and marked it as "S". The Police affixed seals on the Envelope marked "S" in our presence.

They collected some of the blood from the ground where the lady had been lying. They collected on cotton swabs and put them in a plastic bag after drying. The police sealed the plastic bag and made us sign our name. API Sharma also signed and dated the seal and then marked it as "C". This was done in our presence. There was also one cell phone, Nokia 3310 grey colour which was lying near where the lady had been. The police collected the phone and put it in a plastic bag. The police sealed the plastic bag and made us sign our name. API Sharma also signed and dated the seal and then marked it as "P". This was done in our presence.

There was a carry bag with some children's plastic toys in it. The police picked up the bag also.

The police searched the area and a small distance of about 1 foot from where the old lady had been lying they found a stained man's handkerchief. They picked up the handkerchief and packaged it in a plastic bag. The police pasted shut the plastic bag and made us sign the same. API Sharma also put his dated signature on the envelope and marked it as "H". The Police affixed seals on the bag marked "H" in our presence.



Except for the above articles nothing else was seized by the police in our presence.

The panchnama was conducted in a peaceful manner and it was concluded at about 6.00 pm on 11<sup>th</sup> Aug, 2017. The panchnama was written by API Sharma. Both of us panchas have read the contents of the panchnama. The same is correctly recorded.

*Signed API Sharma*

*Signed Panch No 1*

*Signed Panch No 2*

**EXHIBIT NO. 4**

**MEDICOLEGAL INJURY CERTIFICATE**

EPR No: 202

Date: 11.Aug.2017

Time: 5.35pm

Brought by P.C. No WPC 445, Shivaji Park Police station

C.M.O. on Duty: Dr Ashwini Lad

NAME: Shantabai Kamble

AGE: 50 years

SEX: Female

**ON GENERAL PHYSICAL EXAMINATION (GPE):**

Gait –unsteady

Speech – compromised

Pupils – dilated and reactive

Pulse – 55 / minute

B.P. 90/50 mm Hg

IDENTIFICATION MARKS: nose piercing in left nostril

TYPE OF INJURIES: Sharp instrument trauma to the neck – deep lateral laceration on the left side of the neck

OPINION: In my opinion, patient is suffering from haemorrhagic shock due to trauma to the neck and subsequent blood loss.

REMARKS: Patient admitted to Intensive Care Unit for intended surgery. Patient put on blood and IV fluids, and subsequent observation. Patient was unable to talk and give history of attack.

*Signed: Dr. Ashwini Lad, C.M.O.*

*Hinduja Hospital, Mahim*

**EXHIBIT 5:**

**BIOLOGICAL EXAMINATION REPORT**

FSL case No: *B-402/17*

Date: *14.Aug.2017*

Total no. of pages: *One*

To: The Senior Police Inspector

Shivaji Park Police Station

Dist:- Mumbai

1. Ref No: *915/17*

Date: *14.Aug.2017*

2. No. of exhibits received: *One*

P.S. : *Shivaji Park, Dadar W*

3. C.R. No: *1128/2017*

U/s: *IPC 307, 363*

4. Mode of Receipt: *by ASI Patil*

Date of Receipt: *14.Aug.2017*

5. Condition of parcel(s) / seal(s): *One sealed parcel; seals intact*

6. Description of article(s) contained in the parcel(s):

*One stained handkerchief labelled – CR#1067/2017 Ex H*

**7. Results of Analysis:**

***CR#1067/2017 Exhibit H - stain blood group analysis is A positive***

8. Analysis started on: *18.Aug.2017*

9. Analysis completed on: *18.Aug.2017*

10. Analysed by:

Sd./ (M.V. Pathak)

Assistant Chemical Analyser in Government  
Forensic Science Laboratories, Mumbai

**EXHIBIT 6:**

**BIOLOGICAL EXAMINATION REPORT**

FSL case No: *B-402/17*

Date: *14.Aug.2017*

Total no. of pages: *One*

To: The Senior Police Inspector

Shivaji Park Police Station

Dist:- Mumbai

1. Ref No: *916/17*

Date: *14.Aug.2017*

2. No. of exhibits received: *One*

P.S. : *Shivaji Park, Dadar W*

3. C.R. No: *1128/2017*

U/s: *IPC 307, 363*

4. Mode of Receipt: *by ASI Patil*

Date of Receipt: *14.Aug.2017*

5. Condition of parcel(s) / seal(s): *One sealed phial seals intact as per copy sent*

6. Description of article(s) contained in the parcel(s):

*Phial of blood labelled – Smt. Shantabhai Kamble CR#1067/2017 Ex SK*

7. **Results of Analysis:**

***CR#1067/2017 Exhibit SK Blood Group analysis is A positive***

8. Analysis started on: *18.Aug.2017*

9. Analysis completed on: *18.Aug.2017*

10. Analysed by:

Sd./ (M.V. Pathak)

Assistant Chemical Analyser in Government

Forensic Science Laboratories, Mumbai

**EXHIBIT 7:**

**BIOLOGICAL EXAMINATION REPORT**

FSL case No: *B-402/17*

Date: *14.Aug.2017*

Total no. of pages: *One*

To: The Senior Police Inspector

Shivaji Park Police Station

Dist:- Mumbai

1. Ref No: *917/17*

Date: *14.Aug.2017*

2. No. of exhibits received: *One*

P.S. : *Shivaji Park, Dadar W*

3. C.R. No: *1128/2017*

U/s: *IPC 307, 363*

4. Mode of Receipt: *by ASI Patil*

Date of Receipt: *14.Aug.2017*

5. Condition of parcel(s) / seal(s): *One sealed phial seals intact as per copy sent*

6. Description of article(s) contained in the parcel(s):

*One phial of blood labelled Shri Vishal Sheth – CR#1067/2017 Ex VS*

7. **Results of Analysis:**

***CR#1067/2017 Exhibit VS - Blood Group analysis is A positive***

8. Analysis started on: *18.Aug.2017*

9. Analysis completed on: *18.Aug.2017*

10. Analysed by:

Sd./ (M.V. Pathak)

Assistant Chemical Analyser in Government

Forensic Science Laboratories, Mumbai

**EXHIBIT 8:**

**BIOLOGICAL EXAMINATION REPORT**

FSL case No: *B-402/17*

Date: *14.Aug.2017*

Total no. of pages: *One*

To: The Senior Police Inspector

Shivaji Park Police Station

Dist:- Mumbai

1. Ref No: *918/17*

Date: *14.Aug.2017*

2. No. of exhibits received: *One*

P.S. : *Shivaji Park, Dadar W*

3. C.R. No: *1128/2017*

U/s: *IPC 307, 363*

4. Mode of Receipt: *by ASI Patil*

Date of Receipt: *14.Aug.2017*

5. Condition of parcel(s) / seal(s): *One sealed envelope seals intact as per copy sent*

6. Description of article(s) contained in the parcel(s):

*One stained scissor labelled – CR#1067/2017 Ex S. Swabbings of suspected bloodstains taken and parcel resealed. Swabbings labelled CR#1067/2017 Exhibit SS.*

**7. Results of Analysis of Swabbings of Scissor:**

***CR#1067/2017 Exhibit SS Blood Group analysis is A positive***

8. Analysis started on: *18.Aug.2017*

9. Analysis completed on: *18.Aug.2017*

10. Analysed by:

Sd./ (M.V. Pathak)

Assistant Chemical Analyser in Government  
Forensic Science Laboratories, Mumbai

**EXHIBIT 9:**

**FINGERPRINT BUREAU REPORT**

PFBL case No: *FB 1123/17*

Date: *14.Aug.2017*

Total no. of pages: *One*

To: The Senior Police Inspector

Shivaji Park Police Station

Dist:- Mumbai

1. Ref No: *1005/17*

Date: *14.Aug.2017*

2. No. of exhibits received: *One*

P.S. : *Shivaji Park, Dadar W*

3. C.R. No: *1128/2017*

U/s: *IPC 307, 363*

4. Mode of Receipt: *by ASI Patil*

Date of Receipt: *14.Aug.2017*

5. Condition of parcel(s) / seal(s): *One sealed brown paper envelope parcel as per copy sent*

6. Description of article(s) contained in the parcel(s):

*One metal stained scissor with 12 inch blade, packaged in newspaper – CR#1067/2017 Ex S.*

7. Description of analysis required:

*Fingerprint analysis on the blades and handle portions of the said scissor to establish identity of handler through fingerprint comparison*

**8. Results of Analysis:**

*The scissor CR#1067/2017 Exhibit S shows the presence of multiple indistinct fingerprints. Identity of fingerprints – inconclusive.*

9. Analysis started on: *22.Aug.2017*

10. Analysis completed on: *22.Aug.2017*

11. Analysed by:

Sd./ (DD Chettiar)

**EXHIBIT 10:** Court Order for Custody

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
GUARDIANSHIP PETITION NO. 25 OF 2016**

Anamika Sheth ... Minor child

Mrs. Philomena Gavin DeSouza ... Petitioner

Vs.

Mr. Vishal Vivek Sheth ... Respondent

Adv. Mrs. Monika Patel for the Petitioner

and Adv. Mr. P.K. Zambre for the Respondent.

**CORAM: MR. H.R. SHAIKH, J.**

**Date of Judgment: 5<sup>th</sup> December, 2016**

**JUDGMENT:**

1. The Petitioner in this Petition is the maternal grandmother of the minor child, Anamika Sheth, who is about 11 months of age and the Respondent is the father of the minor child.
2. The parent of the minor child, the Respondent herein and Late Maria (the mother of the minor) got married on 23<sup>rd</sup> September, 2012. Maria was a Roman Catholic and the Respondent is a Hindu and theirs was a love marriage. Anamika was born on 3<sup>rd</sup> January, 2016.



3. The Petitioner has averred in the Petition that the Respondent has a major drinking problem, which often resulted in the Respondent assaulting Maria whilst under the influence of alcohol. Due to this their matrimonial relationship was strained. After the birth of Anamika, the Respondent harassed Maria on account of birth of a girl child, and started associating with other females resulting in grave mental cruelty to Maria. Therefore, Maria was forced to leave her matrimonial home with Anamika and start residing with her mother, the Petitioner herein.
4. Maria died as a result of an overdose of sleeping pills on 8<sup>th</sup> November, 2016. Anamika who was, at the time of the death of her mother, living with her grandmother and was 10 months old and since then has been in the care of her maternal grandmother who resides in Mumbai. The minor child has, therefore, adjusted to the grandmother and her maternal love and care, as also her surroundings since the last about 8 to 9 months.
5. The Petitioner herein is stated to be 66 years old. She is a retired School Principal and therefore well versed with dealing and raising children from their tender years. She claims to receive a monthly pension of Rs.50,000/ p.m., as income, excluding her savings and investments. The Petitioner herein has also kept a full-time nanny to look after the minor child. She has a son who resides in Qatar and sends an amount of Rs.20,000/- to Rs.30,000/- p.m to her for the upkeep of his niece Anamika.
6. The Affidavit-in-Reply of the Respondent has been filed today and the facts and contentions taken up by him have been considered. This Petition is amenable to disposal upon the aforesaid admitted facts. The grandmother is allowed to proceed on the basis of denial of the statements in the Affidavit-in-Reply of the father, the Respondent herein. The only aspect which in simplicitor is contended by the Respondent is with respect to the income of the grandmother, and his drinking problem has not been specifically dealt with or denied by him. The precise extent of the income is not a determinative factor either under the aforesaid statutory provision or under the principles

of equity. The Court must not only consider whether the minor is well provided for materially, but also see if the minor is cared for emotionally. The welfare of the child is of paramount importance.

7. It would be unnecessary to call upon parties to lead evidence in view of largely admitted facts which are required to be considered in terms of the law under the Guardians and Wards Act, 1890.
8. The first natural and legal guardian of the child is her father. However, the aforesaid circumstances show that he is clearly unfit to be given custody of the minor child. A child is not a chattel. The Custody of the child cannot be altered upon the instructions of the person who cannot claim custody in view of his unfitness. Moreover, the conduct of the Respondent in visiting the minor child at the house of the Petitioner only once after the death of his wife also speaks volumes of the affection the Respondent bears for his daughter. Therefore, between the grandmother and the father, the grandmother is the most apt and fit person to be appointed as a guardian in view of the prior undisturbed custody. Hence, the grandmother, would be entitled to keep the custody of the minor child and be appointed as her legal guardian unless she is shown to be unfit to be so appointed or unless a more fit person applies for and can be appointed.
9. The Respondent/father being the natural guardian, is entitled to have only visitation rights over the minor child, that too only in the presence of the Petitioner, as per the convenience of the Petitioner and keeping in mind the tender age of the minor involved.
10. In light of the visitation rights granted to the Respondent, the Petitioner is appointed as a legal guardian in respect of the person and properties of the minor child, Anamika Sheth and her permanent custody shall be with the Petitioner. This Petition is disposed off accordingly with no orders as to costs.

**Sd/-**

**(MR. H.R. SHAIKH, J.)**

## **APPENDIX 1:**

## **STATEMENTS OF DEFENCE WITNESSES**

### **DW 1 – Mrs. Sonali Mhatre**

Age: 38 years

Occupation: Financial Analyst, ATGC Ltd.

Address: Flat 24, Hill View Terraces, Carmicheal Road, Mumbai 400036

**Statement:** I have known Vishal Sheth for the past 6 years. He is a very good friend. We met when I had applied to his firm for a job. Unfortunately he was not able to hire me at the time but we became good friends and have kept in touch ever since. In the past 18 months Vishal has been going through a very difficult period. First he was shattered when his wife Maria took her own life. He said that she had shown symptoms of post-partum depression after the birth of their beautiful daughter Anamika, but refused to be treated for it. He had given up trying to help her. She then took her own life in November 2016. This broke Vishal and I spent many afternoons listening to his problems. To compound his loss, Maria's mother, who really seems to hate Vishal and blames him for her daughter's unhappy married life and subsequent death, got a Court order for sole guardianship of Anamika on grounds that Vishal was mentally unstable and unfit to parent Anamika. He was devastated and had started drinking heavily to combat the pain and then for a few months he disappeared and I did not hear from him. In early June 2017, he contacted me again. He said he wanted to meet. He told me that he had been in an ashram for a couple of months and he seemed rehabilitated and very calm, focussed and even somewhat repentant about the loss of his wife. He said he was 'a changed man' whose intention was to win back the custody of his daughter Anamika, and he hoped to get a chance to give her the best life a little girl could have. He worked long hours and spent endless weekends with his lawyer so as to build a strong case for getting custody of Anamika. On Saturday 29<sup>th</sup> July 2017, I forced him to come for lunch with a

bunch of common friends. We had a pleasant lunch and were just leaving the restaurant Tertulia in Dadar, when we ran into his mother-in-law on the street. She came up to him and started abusing him and yelling at him. He kept trying to interrupt her and ask her to calm down but she would not listen. I remember clearly that pointing at me she said “ ...this ugly witch is the reason you tormented my daughter and drove her to take her own life. I curse you with every breath in my body. If it kills me, I will ensure that you never get to see Anamika ever again”. We were both shocked and shaking from the encounter. We got into his car and drove town side. He did not speak in the car and withdrew into a corner just staring out of the window. The driver dropped me home first, and when I turned to wave him off he was looking out the window with tears streaming down his face. I know one thing for sure, the old Vishal (prior to his ashram stint) would have been angry and vocal...this man appeared to be broken. I have not been in touch with him over the last couple of weeks because I was travelling. My husband and I take a summer break every year in the first few weeks of August. When I returned from my holiday in Bali, I came to know from our common friends about Vishal’s arrest for kidnapping Anamika and attempting to murder Anamika’s nanny. I was shocked as I fail to understand how a parent can be charged for kidnapping his own child. I am sure that Vishal is incapable of hurting anybody and would never take this route as he would thereby be destroying his chances of getting custody of Anamika from the Court.

**DW2- Dr. K.M. Soonawalla**

Age: 59 years

Occupation: General Practitioner

Address: Hilla Polyclinic, Gamadia Parsi Colony, Tardeo.

**Statement:** I am a general practitioner and have been practicing medicine for the last 35 years. I have a consultancy at the Gamadia Parsi Colony polyclinic, and I sit there 3 evenings a week. I have been seeing Mr. Vishal Sheth for the past 3 years as he used to have a chronic sinus problem. He would come to me very regularly for medicines, and in the monsoon season he used to be particularly ill and always needed regular visits. On Friday 11<sup>th</sup> Aug 2017, when I was finishing my lunch, I got a call from him and he asked me to do a house call as he was really under the weather and had no driver to bring him to the clinic. I agreed to visit him before my regular clinic hours. I must have reached his house sometime between 2.30 and 3.00 pm and found him in bed, wrapped in blankets, looking quite feverish. He said he had been feeling extremely unwell for the last three days but had avoided calling me in the hope that his health would improve with rest but now, since he had to go on a business trip on Saturday he needed me to give him something strong to kick the fever and allow him to go through with the business trip. I advised him to cancel the trip as he was too unwell to go, but he refused to listen to my counsel. Eventually, I gave him an injection to relieve the body ache and fever, and then I left. I must have been with him for no more than 30 minutes. I proceeded to my clinic. When I called him after evening clinic, his phone was unreachable. I thought he may have decided to sleep early and did not follow up further.

**DW3- Mr. Shripal Mehta**

Age: 44 years

Occupation: Advocate

Address: RSM & Associates, 6 Homi Mulla Street, Flora Fountain, Fort, Mumbai

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**Statement:** I am a lawyer and partner in RSM & Associates. We have been approached by Mr. Vishal Sheth sometime in mid-February, 2017 for getting the custody of his daughter Anamika , after the untimely demise of his wife, Maria Vishal Sheth and custody being handed over to his mother-in-law Mrs. Philomena DeSouza. He was concerned that his mother-in-law was determined to separate him from his daughter in retaliation for the death of his wife. He admitted his wife had taken her own life due to severe, untreated post partum depression. He said that his mother-in-law blamed him for her death and had often threatened to make sure 'he paid for Maria's untimely death'.

Upon going through the Custody Order dated 5<sup>th</sup> December, 2016, I realised that some serious allegations were made against Vishal. When I confronted him with the same, he vehemently denied them and told me that Philomena is vindictive and had assured him repeatedly that she would never let him succeed in getting even visitation rights to his daughter. Over the months, Vishal would diligently come to my office and spend hours in discussing legal strategy to win back visitation rights/custody of his daughter. In this regard we had several legal conference with Senior Counsel Mr. Khushroo Khambatta, who is an authority in matrimonial and custody matters. In fact just about ten days ago with the assistance of Mr. Khambatta and his junior Mr. Pesi Driver, our Firm had drawn up a petition which was to be filed on behalf of Vishal in the Bombay High Court. Both Mr. Khambatta and Mr. Driver had repeatedly assured Mr. Vishal that this time his petition would be allowed and he would succeed in getting custody/visitation rights of his daughter. Therefore, when I.O. Padmanaban came to my office to make inquiries with regard to the charge of kidnapping and attempt

to murder, levelled against Mr. Vishal, I emphatically told him that they are trying to falsely implicate a man who was on the verge of legally acquiring the custody of his daughter, only at the behest of a vindictive mother-in-law. I even showed I.O. Padmanaban a draft of the Petition prepared on behalf of Vishal to drive home my point.