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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.136 OF 2015

Rehana Noor Mohd. Shaikh,
for
V/s.

... Appellant

The State of Maharashtra
and others

.... Respondents

Mr. Prashant C. Mohite, for the Appellant.

Mrs. S. D. Shinde A.P.P., for the Respondent-State.

CORAM : P.V.HARDAS &
DR. SHALINI PHANSALKAR-JOSHI, J.J.

DATE : 20TH FEBRUARY, 2015.

P.C : [Per Dr. Shalini Phansalkar-Joshi]

1. This appeal is preferred under Section 372 of the Code of Criminal Procedure, challenging the acquittal of the respondent Nos 1 to 3, for the offences punishable under Section 302 read with 120-B of the Indian Penal Code and Section 3 read with 25 of the Arms Act, by

Additional Sessions Judge, Greater Bombay, vide his judgment dated 14.10.2014 in Sessions Case No.95 of 2012.

2. Facts as are necessary for the decision of this appeal may be stated thus:-

On 9th September, 2011 at 9.35 p.m. P.W.1 informant Rais Anis – a taxi driver gave information at Dharavi police station about commission of a cognizable offence. His information was reduced in writing and was treated as F.I.R. It was alleged therein that when he has parked his taxi on Dharavi 90 feet road in front of Shamiyana hotel at 9.30 p.m. He saw one blue colour Lancer car bearing MH-04/AX-1277 was proceeding on the road. One person suddenly came in front of the car. Hence car was stopped. Another person tried to break front glass of the car with the help of handle of the dagger which he was holding. Then said person broke the right side front window glass of the car and fired from his country made firearm on the driver of the car. The first assailant dragged the driver of the car, out of the car and second assailant started stabbing the car driver with the help of dagger. As the persons gathered there, those assailants ran away. The name of the injured was found to be Nooruddin. He was taken to Sion Hospital where he was declared dead.

3. During the investigation, statements of witnesses were recorded and the spot panchna was made. The weapons of assault like firearm, empty cartridges and dagger came to be seized and were sent to Chemical Analyzer. On completion of investigation, chargesheet came to be filed. On the case being committed to the Court of Sessions, the trial Court framed charge against respondents, for the offences punishable under Sections 302 read with Section 120B of the IPC and section 3(25) of the Arms Act. Respondents pleaded not guilty and claimed trial.

4. To prove its case, the prosecution examined as many as 15 witnesses. On appreciation of evidence on record, the trial Court acquitted respondents of both the charges levelled against them. This judgment of the trial Court is being questioned in this appeal by the appellant, who is the real sister of the deceased Nooruddin Shaikh.

5. The learned APP has submitted, on instructions, that the State is not preferring any appeal against this judgment of acquittal.

6. We have heard learned counsel for the appellant Mr. Prashant C. Mohite, and learned APP Mrs. S.D. Shinde, for the State.

With the assistance of the learned counsel for the appellant, and learned APP, we have also examined the findings arrived at by the trial court.

7. In evidence before the trial Court, though the prosecution has examined in all 15 witnesses, the main reliance of the prosecution was on the evidence of five eye witnesses viz P.W.1 Rais Anis Shaikh, P.W.2 Imtiyaz Ashan Shaikh, P.W. 3 Ayyaz Rehmatulla Khan, P.W.4 Noor Mohd. Mohd. Islam, and P.W.8 Mohd. Aslam Sayyed Ali Shaikh. Out of these five eye witnesses, P.W.1 Rais, P.W.4 Noor Mohd. and P.W.8 Mohd. Aslam have not supported the prosecution case. Hence, they were declared hostile, but nothing worthwhile is elicited in their cross examination to prove the prosecution case.

8. It leaves prosecution with the evidence of two eye witnesses only – P.W.2 Imtiyaz and P.W.3 Ayyaz. Admittedly the assailants were unknown to all the eye witnesses. In the test identification parade, only two eye witnesses were called, but they did not identify any of the assailants. P.W.2 Imtiyaz, who is also an eye witness as per prosecution case, has not identified any of the respondents either in the test identification parade or in evidence before the Court. He has further stated that he has not seen the assailants.

9. The only remaining eye witness P.W.3 Ayyaz Khan, who claims to have seen and identified the assailants, his evidence, trial Court has discussed in para Nos 16 to 18 and found that his evidence is not reliable as he claims to have seen the incident from the distance of 25 meters with traffic on the road and people gathered around the spot. Moreover, his conduct after the incident was also found to be unnatural by the trial Court.

10. The firearm was not proved to be used in the offence as no injuries caused by the firearm were found on the person of the deceased. As per C.A. report, empty cartridges recovered from the spot were not found to be used from the firearm recovered. As regards recovery of the dagger and the clothes, no blood stains were found thereon. Hence necessary link is not established by the prosecution.

11. In the absence any incriminating evidence on record, thus, the trial Court has acquitted respondent No.3/original accused No.3 under Section 232 of the Code of Criminal Procedure itself and respondent Nos 1 & 2 under Section 235 of the Code of Criminal Procedure.

12. On perusal of the judgment of the trial Court, we do not find that the trial Court has committed any error, much less any perversity in arriving at these findings so as to interfere in the order of acquittal, as passed by the trial court. The view taken by the trial Court is a possible view to be taken on the basis of the evidence on record.

13. Since we do not find any merit in the present appeal, appeal stands dismissed confirming the acquittal of the respondent Nos 1 and 2. Bail bonds of respondents stand cancelled.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

[P.V.HARDAS, J.]