

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.248 OF 2007

Ramu K. Ramsami Shetty	]	
Aged about 48 Yrs.,	]	
Occ.: Service,	]	
R/at Banganga Muttan Gully,	]	
Behind Kashinath Temple,	]	
Banganga, Mumbai	]	 Appellant

Versus

The State of Maharashtra	]	 Respondent
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Dr. Yug Mohit Chaudhary 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 : 26TH FEBRUARY, 2015.

ORAL JUDGMENT [Per Dr. Shalini Phansalkar-Joshi, J.] :

1. The Appellant, who stands 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.1,000/-, in default to undergo R.I. for one year, by Judgment dated 27th December, 2006 in Sessions Case No.422 of 2006, by 5th Ad-Hoc Additional Sessions Judge, Mumbai at Sewree, by this Appeal, challenges his conviction and sentence.

2. Facts, as are necessary, for deciding this Appeal can briefly be stated thus :-

On 26th February, 2006, while PW-8 API Prakash Jadhav was on duty as Station House Officer at Malbar Hill Police Station, at about 1:30 am, PW-1 Ramlakhan Patalwanshi came to the Police Station along with PW-3 Charles D'Souza, the Taxi Driver, and reported the incident of murder, which has taken place in his presence at Slope Garden. PW-8 API Jadhav recorded his complaint vide Exhibit-10 and registered C.R. No.16 of 2006 for the offence punishable under Section 302 of the IPC. Then, along with PW-1 Ramlakhan and PW-3 D'Souza, PW-8 API Jadhav went to the spot, after informing PW-7 PI Suresh Magdum. He also took with him two Panchas, Photographer and sealing material. PW-1 Ramlakhan showed him the spot where the dead body of Ramesh was lying with injury to his head. PW-8 API Jadhav made the Spot Panchanama of the dead body in the search light of the vehicle vide Exhibit-15. From the spot, he collected big stone with blood stains thereon, the bed-sheet and foot-wear of the deceased, blood stained mud and one gunny bag. The Photographer took about 27 photographs of the deceased in different angles. PW-8 API Jadhav then sent the dead body of Ramesh for postmortem. On the next date, i.e. on 26th February, 2006,

the Appellant was arrested and the clothes on his person came to be seized under Panchanama (Exhibit-23).

3. On the same day, PW-8 API Jadhav recorded the statement of PW-3 Charles, the Taxi Driver. On 1st March, 2006, the clothes on the dead body of Ramesh were produced by Police Constable. PW-8 API Jadhav seized those clothes under Panchanama (Exhibit-16). Further investigation of the case was taken over by PW-7 PI Magdum.

4. On 6th March, 2006, PW-7 PI Magdum recorded the statement of the Photographer PW-2 Ahmad Kazi. On 16th March, 2006, he sent seized muddemal articles to Chemical Analyzer. The C.A. Reports are produced on record at Exhibits "25" and "26". After collecting the Postmortem Notes (Exhibit-18) and further to completion of investigation, PW-7 PI Magdum filed Charge-Sheet in the Court against the Appellant.

5. On case being committed to the Sessions Court, the Trial Court framed charge against the Appellant vide Exhibit-2. Appellant denied the guilt and claimed to be tried.

6. In support of its case, Prosecution examined eight witnesses, the main reliance of Prosecution being on the evidence of an eye witness PW-

1 Ramlakhan. The Trial Court placed implicit reliance on his evidence and further relying upon the C.A. Reports and the Postmortem Report, the Trial Court held the guilt of the Appellant to be proved beyond reasonable doubt and convicted and sentenced him, as aforesaid.

7. This Judgment of the Trial Court is assailed in the present Appeal by learned Counsel for Appellant Mr. Yug Mohit Chaudhary, whereas, supported by learned A.P.P. Mrs. S.D. Shinde. In our considered opinion, in order to effectively deal with their rival submissions, it would be useful to refer to the evidence on record.

8. To prove the homicidal death of the deceased, Prosecution has examined PW-5 Dr. Abhijeet Subhash Gawade, who has conducted the postmortem. As per his evidence, he found following injuries :-

- *CLW on right ear;*
- *CLW on right temporal region; and*
- *CLW on right occipital region.*

9. According to him, all these injuries were bone deep. There were fractures on his maxilla and mandible with loosening of teeth.

10. On his internal examination, he found :

- *heamatoma under the scalp;*
- *fracture parito occipital bone; and,*
- *brain conjected with subdoral and sub-orchnold heamorrhage.*

11. He has opined that the cause of death was “head injury and, hence, unnatural”. Accordingly, he has prepared the Postmortem Report (Exhibit-19). There is no cross-examination of this witness as to the cause of the death.

12. As aforesaid, the main or one may say, the entire reliance of the Prosecution case is on the evidence of a single and solitary eye witness PW-1 Ramlakhan. He has deposed that he used to do the job of looking after the dogs of Parasi people and was sleeping in the open barren place near Spenta Building. He was knowing deceased Ramesh, who was collecting newspapers and plastic and used to sleep on the *katta* (platform) by the side of the road. He was also knowing the Appellant, who used to work on Vada-Pav Handcart. According to him, deceased Ramesh and Appellant were on talking terms and, thus, knowing each other.

13. As to the incident, he has deposed that on that night, he went to bed and was sleeping as usual in the open space near Spenta Building. At

about 12^oclock, in the mid-night, he heard the barking of dogs. Hence woke up. He removed the bed-sheet from his face and saw Appellant dragging deceased Ramesh from the *katta* by catching his legs, up to old nursery place. He further saw that Appellant lifted one big stone and thrown it twice on Ramesh's head. As a result, Ramesh's head was ruptured, broken and smashed. Hence, PW-1 Ramlakhan became frightened. After seeing the incident, he pretended to sleep by pulling bed-sheet on his face. However, after the Appellant left from the spot, he got up from the bed, came on the road and reported this incident to the watchman and one taxi driver, i.e. PW-3 D'Souza, who were residing at that place. Along with Taxi Driver PW-3 D'Souza, in his taxi, he went to the Police Station and lodged the complaint (Exhibit-10). Thereafter, Police came along with him to the spot and did Spot Panchanama and Inquest Panchanama.

14. In his cross-examination, however, some material circumstances are brought on record by the Defence, which go to show that deceased Ramesh was sleeping at a distance of about 50 feet from the place where he was sleeping. Further, he has stated that it was a dark night and there were trees in the garden. As per his further cross-examination, deceased Ramesh was dragged for a distance of about 40 feet to 50 feet from the place where he was sleeping and the said place was at a lower level from

the place where he was sleeping. Though he has stated that he could see that spot from where he was sleeping, his evidence stands contradicted by the evidence of PW-8 API Jadhav.

15. As per evidence of PW-8 API Jadhav, the distance between the *katta*, where Ramesh was sleeping, and the spot, where he was taken, was about 70 feet. Further, he has stated that the dead body of Ramesh was lying below the level of nursery *katta*. There is also evidence of Panch Witness to the Spot Panchanama, PW-4 Kundansingh Manral. In his cross-examination, he has admitted that the place, where the dead body was lying, was not visible from the place, where PW-1 Ramlakhan, Informant, was sleeping.

16. Thus, the case made out by PW-1 Ramlakhan that, remaining at the same place, where he was sleeping, he saw Appellant dragging deceased Ramesh from a distance of about 70 feet and, thereafter, assaulting him by stone on his head was seen by him, becomes suspect. Further, the incident had, admittedly, taken place at dead at night in the garden. The spot of the assault was on the lower side from the place where PW-1 Ramlakhan was sleeping. Not only that, there was no light at the spot, which fact can also be inferred from the evidence of PW-8 API Jadhav,

who has stated in examination-in-chief that in the search light of the vehicle, the Spot Panchanama and Inquest Panchanama were made.

17. Another major circumstance, which also creates doubt about the way in which the incident is said to have occurred, is that neither in the Inquest Panchanama nor in the Postmortem Notes, it is brought on record that any injuries like scratches or abrasions were found on the dead body. If, as per the evidence of PW-1 Ramlakhan, deceased Ramesh was dragged for a distance of about 70 feet, by catching his legs, then, it necessarily follows that there should be some scratches or the injuries in the nature of abrasions. But, both, the Inquest Panchanama and Postmortem Report are silent about it. Conversely, PW-5 Dr. Abhijeet Gawade, who has conducted the postmortem, in his cross-examination, has admitted that there were no other injuries on the dead body other than face. No evidence is also brought on record to show that the clothes on the body of the deceased were torn in any way, due to dragging.

18. The evidence of the Taxi Driver PW-3 Charles further creates doubt as to whether PW-1 Ramlakhan had really seen or was able to see the Appellant assaulting the deceased. In his examination-in-chief itself, PW-3 Charles, the Taxi Driver, has stated that while he was sleeping in his taxi,

the Appellant came there and told him that deceased Ramesh was killed by “somebody” and they have to go to Police Station. If PW-1 Ramlakhan had seen the Appellant assaulting the deceased, then there were no reason why he has not told PW-3 Charles the name of Appellant instead of saying “somebody” has assaulted the deceased. This witness is not confronted about the information given to him by PW-1 Ramlakhan disclosing the name of the Appellant as assailant, if it was really so. Moreover, the watchman, to whom also PW-1 Ramlakhan has stated that, he has reported the incident, is not examined by Prosecution.

19. The question for consideration is *“in the face of these lacunae and infirmities whether implicit reliance can be placed on the testimony of PW-1 Ramlakhan, who is a single eye witness?”*. We are aware that there is no hurdle in placing reliance on the testimony of solitary witness, provided that his evidence is of a sterling worth. In the facts of the present case, the testimony of PW-1 Ramlakhan cannot be called as of a sterling worth to place implicit reliance thereon to convict the Appellant for the offence.

20. Though the Prosecution and the Trial Court has also relied upon the C.A. Reports to show that the blood stains of AB blood group of the deceased were found on the clothes of the Appellant, the contents of the

C.A. Reports were not confronted to the Appellant in his statement under Section 313 of the Cr.P.C. Therefore, there was no opportunity for him to explain this circumstance and, hence, this Court cannot place reliance on the same, as it may cause prejudice to the Appellant. Moreover, the C.A. Report (Exhibit-26) go to show that the blood group of the Appellant could not be analyzed and results were inconclusive. In such situation, the possibility of Appellant also having the AB blood group cannot be ruled out. Therefore, this fact does not lead to unerring conclusion of Appellant being guilty.

21. Except for the evidence of eye witness and this circumstance of C.A. Report, the Prosecution has not brought on record any other incriminating evidence against the Appellant. In our considered opinion, therefore, as Prosecution has failed to prove both these circumstances with the cogent, reliable and convincing evidence on record, the Appellant becomes entitled to get benefit of doubt.

22. Accordingly, Criminal Appeal is allowed and the conviction and sentence of the Appellant is hereby quashed and set aside and the Appellant is acquitted of the offence with which he was charged and convicted. Fine, if paid by the Appellant, be refunded to him. Since the

Appellant is in Jail, he be released forthwith, if not required in any other case.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

[P.V.HARDAS, J.]