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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1199 OF 2004

Guddu @ Faimuddin Salimuddin Shaikh
Age 25 years, Occ: Service,
Residing at Jagrutinagar, Room No. 698
Behind Sheetal Hotel,
Kurla (W), Mumbai.

.. Appellant

Versus

The State of Maharashtra

.. Respondent

Ms. Swapna Kode, Advocate Appointed for the appellant.
Mr. H. J. Dedhia, APP for State.

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

FEBRUARY 10, 2015.

ORAL JUDGMENT [Per P. V. Hardas, J.]:

1. The appellant, who stands convicted for offence punishable under Section 302 of the Indian Penal Code and sentenced to imprisonment for life and to pay a fine of Rs.5000/-, in default of which to undergo further RI for three months, by the Sessions Judge, Pune, by judgment dated 18/08/2004, in Sessions Case No. 482 of 2003, by this appeal questions the correctness of his conviction and sentence.

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

PW 9 – PI Narayan Khaire, who, on 24/9/2003, was attached to the Bhosari Police Station and was on petrolling duty, received a message from the police station at about 12.30 a.m. that one Moharam Ali, residing in room of one Khandare, situated behind Dhor Company at Kasarwadi was assaulted by the appellant. He was further informed that the injured had been taken to the YCM Hospital, where he had succumbed to his injuries during treatment. On receipt of the said message, PW 9 – PI Khaire immediately proceeded to the YCM Hospital. At the hospital, he made enquiries and accordingly recorded the complaint of one Mukhtar Mushtaq Khan. The report of Mukhtar Mushtaq Khan was forwarded to the police station for registration of offence and accordingly an offence was registered vide Crime No. 237 of 2003 under Section 302 of the IPC. The Medical Officer had pronounced the victim i.e. Moharam Ali as dead. A search was launched for the appellant and the appellant was found sleeping on the platform of the Kasarwadi Railway Station. The appellant was then brought to the police station, where he was arrested under arrest panchanama at Exh. 18. Meanwhile, the inquest panchanama of the dead

body of deceased Moharam Ali was drawn and the dead body was referred for postmortem examination. A scene of the incident panchanama was also drawn in the presence of panchas at Exh.20. From the scene of the incident, samples of blood stains were obtained and seized. Sample of blood mixed mud and ordinary mud were also obtained. A photographer was called, who took photographs of the scene of the incident. The clothes of the deceased were seized under panchanama at Exh. 27 in the presence of the witnesses. On the next day, the statement of witnesses were recorded and the clothes of the appellant were seized under panchanama at Exh.25. The appellant was referred to the YCM Hospital for medical examination and for drawing of the blood sample. The injury certificate of the appellant is at Exh. 23. On 29/9/2003, during custodial interrogation, the appellant expressed his willingness to point out the place where a knife had been concealed. The memorandum of the appellant was accordingly recorded in the presence of panchas at Exh.29. The appellant led the police and the panchas and produced. The knife was found to be blood stained and was seized under seizure memo at Exh. 30. The seized articles were then forwarded to the Chemical Analyzer under requisition at Exh. 34. Further to the completion of investigation, a charge-sheet against the appellant was filed.

Postmortem on the dead body of deceased Moharam Ali was conducted by PW 2 – Dr. Prakash Rokade, who noticed the following external injuries :-

- (i) Deep penetrating wound on the left side of the chest in inter-coastal space between 5th and 6th rib, along the Mid auxiliary line, 6cm below and downwards left side nipple. Margins were sharp. Size of the injury was 2.5 cm. x 1 cm. viscera deep. The injury was spindle shaped and oblique vertically.

Corresponding internal injury

Sub cutaneous tissue beneath cut, inter-coastal muscles of fifth and sixth rib cut, upper part of the sixth rib below the wound found cut obliquely, contusion with heamatoma seen in and around the cut muscles and the cut rib. Pleura parietal and visceral cut, leading to viscera beneath then cutting the pericardium obliquely then cutting the heart tissue, the Right ventricle is found to be cut at the antero-lateral aspect of the lower border, full thickness upto the commissures, vertically oblique of size 2 cms., the margins of the wound are sharp. Blood with ante-mortem blood clots seen in the left sided pleural, mediastinal and pericardial cavity of about 600 cc.

- (ii) Incised wound seen over the left sided loin region of the back, 5 cms laterally and away from the mid-line of the

spind and margins of the wound are sharp 1 x 0.75 cm x 2 cms deep.

Corresponding internal injury

Skin and the sub-cutaneous tissue cut and superficial fascia covering the para-spinal found cut, oblique.

- (iii) Incised wound seen just below and lateral Injury No.2 over the loin region of the back along the waist, Tail Tapering ends of both wound at Lt side 2 x 0.5 cm x 2 cms deep vertically oblique.

Corresponding internal injury

Sub-cutaneous tissue beneath cut, muscle fascia and superficial fibers found cut and hemorrhagic.

- (iv) Contused abrasion over the right side of shoulder region of the hand, externally and laterally right deltoid region, 3 x 2 cms.

Corresponding internal injury

Skin and sub-cutaneous tissue contused and hemorrhagic, irregular shape.

- (v) Abrasion over the right side of frontal emience 1.5 mm x 1 mm oblique shape.

Corresponding internal injury

Superficial skin abraded

- (vi) Abrasion 1 cm below and lateral to injury no.5 on the right side forehead 3 mm x 1 mm with horizontal shape.

Corresponding internal injury

Superficial skin abraded.

He opined that injuries 1, 2 and 3 could be caused by sharp object like knife, while injuries 4, 5 and 6 could be caused due to hard surface during scuffle. He further opined that the death was caused due to traumatic and hemorrhagic shock due to stab injury to the heart tissue. The postmortem report is at Exh. 11.

3. On the case being committed to the Court of Sessions, trial court vide Exh. 3 framed charge against the appellant for offence punishable under Section 302 of the IPC. The appellant denied his guilt and claimed to be tried. Prosecution, in support of its case, examined nine witnesses. The prosecution principally relied on the eye witness account of PW 3 – Sabir Ali, PW 4 – Mohammad Jabir Khan and PW 7 – Laurence John. The report of the C.A. indicates that the clothes of the appellant as well as knife were found to be stained with blood matching the blood group of deceased Moharam Ali. The trial court upon appreciation of the evidence convicted and sentenced the appellant as afore-stated.

4. We have heard Ms. Swapna Kode, learned counsel appointed for the appellant and the learned APP. In order to effectively deal with the submissions advanced before us by the learned counsel for the parties, it

would be useful to refer to the evidence of the prosecution witnesses.

5. Prosecution has examined PW 1 – Raju Khandare, the employer of the appellant and deceased. PW 1 – Raju deposes that he was manufacturing shoes under the name and style of “Akshay Shoes”. According to him, the employees working on his establishment i.e. the deceased, the appellant and the others who have been examined as eye witnesses were residing in a room at Kasarwadi. According to him on the day of the incident, at about 11 p.m., Mukhtar came to his house and informed him that there was a quarrel. PW 1 – Raju, therefore, went and noticed Moharam Ali lying on the road at a distance of about 200 ft. from the shop. He immediately called a rickshaw and with the assistance of others, placed Moharam Ali in the rickshaw and took him to the YCM Hospital. Thereafter, Moharam Ali was declared dead by the Medical Officer. He has admitted that his statement has been recorded by the police.

6. In cross-examination, he has admitted that there was a pool of blood where Moharam Ali was lying on the road. He has admitted that there was no injury on the stomach of Moharam Ali. He has admitted to

have stated in his statement under Section 161 that Moharam Ali had sustained injury on the stomach. He has admitted that his employees were residing in the room on gratis.

7. Prosecution has examined PW 3 - Sabir Ali, who deposes that he was employee of PW 1 – Raju at Kasarwadi and was residing in the room behind the factory. According to him, on 23/9/2003, at about 10 p.m., after taking their meals, the appellant was abusing the other employees. It appeared that the appellant had consumed liquor. According to PW 3 – Sabir Ali, he and the appellant used to cook food in the room, while others used to take their dinner at the hotel. Deceased Moharam Ali had taken his dinner at the hotel and had returned to the room. Moharam Ali informed the appellant, who was then abusing, to go to sleep as it was night. The appellant, being aggrieved by the advise of Moharam Ali, began to abuse him. Deceased Moharam Ali, therefore stood up and there was a scuffle between the deceased and the appellant. PW 3 – Sabir Ali, Mukhtar, Rahul, Jabir and Laurence intervened and stopped the quarrel. They took deceased Moharam Ali outside the room and also informed Moharam Ali to inform the behaviour of the appellant to their employer. Moharam Ali, therefore, went inside the room for wearing his chappals.

The appellant, who was inside the room, was enraged and, therefore, took a knife and stabbed Moharam Ali on the left side of the chest. According to Sabir Ali, at that point of time they were standing outside the room. Moharam Ali cried out and ran outside the room. The appellant chased Moharam Ali. According to Sabir Ali, he thereafter went to the house of one Naushad and on his return Jabir informed him that the appellant was demanding money from Naushad. According to Sabir Ali, Naushad was also working for PW 1 – Raju. He states that the police had come to the hospital and he had accompanied the police for searching for the appellant. The appellant was found at the Kasarwadi Railway Station where he was apprehended by the police. He has identified the knife with which the appellant had stabbed deceased as it was the same knife which was used by him during preparation of dinner.

8. In cross-examination, it is elicited that he, PW 7 – Laurence, PW 4 – Jabir, Mukhtar and Rahul were outside the room. It is also elicited that these witnesses had taken Moharam Ali outside the room after they had intervened in the quarrel. He has denied the suggestion that he had not seen the accused inflicting the blow to Moharam Ali. He has admitted that he was standing outside the room, but could see what was happening inside

the room. It is also elicited that he could see the appellant while stabbing Moharam Ali on his stomach. He has admitted that he did not see whether a blow was dealt on the back. He was confronted with his previous statement where he has admitted to have stated so.

9. Prosecution has examined PW 4 - Mohammad Jabir, who claims that he was a native of Allahabad, but was employed by PW 1 – Raju and was residing in the room along with the other employees. According to him, on the day of the incident, the appellant was abusing everyone. Deceased Moharam Ali had asked the appellant not to abuse. Due to this, there was a quarrel between them, which was followed by a scuffle. The other inmates of the room, including PW 4 – Jabir intervened and took the deceased outside the room. The appellant was alone inside the room. Deceased went inside the room for wearing his chappals and in the meanwhile the appellant took a knife and concealed it behind his back. As soon as deceased entered the room, the appellant stabbed deceased on the chest. The deceased, on sustaining the injuries, rushed outside the room and was chased by the appellant. In cross-examination, he has admitted as correct that the appellant was under the influence of liquor at the time of the incident. He has admitted that he could not give the dimensions of the

room where they were staying. He has admitted that he had only seen the appellant stabbing Moharam Ali once. He could not remember if he had seen the appellant stabbing Moharam Ali on the back. He was confronted with the portion in his 161 statement, which he has stated to have been incorrectly recorded. He thereafter corrected himself to state that the statement had been correctly recorded that he had seen the appellant stabbing deceased on his chest and on his back. Omission has been elicited that he had not stated in his previous statement that he had seen deceased entering the room for wearing his chappals.

10. Prosecution has examined PW 7 – Laurence, who was also employee of PW 1 – Raju. According to him on the day of the incident, the appellant, who was under the influence of liquor, was muttering and was giving abuses to other. Deceased Moharam Ali attempted to pacify him that he should not abuse others. The appellant was annoyed and started abusing Moharam Ali. There was a quarrel between Moharam Ali and the appellant. The deceased told the appellant not to use filthy words. There was a scuffle between the appellant and the deceased as a result of which PW 7 – Laurence and the other witnesses intervened and took deceased Moharam Ali outside the room. The witnesses advised Moharam Ali to

ignore the behaviour of the appellant, who was under the influence of liquor and also advised him to wear his chappals and informed the employer. Deceased Moharam Ali went inside the room for wearing his chappals and the appellant took a knife and stabbed Moharam Ali on his chest. On sustaining the injuries, Moharam Ali rushed out of the house. The appellant also chased Moharam Ali. Meanwhile a crowd had gathered at the place where Moharam Ali had fallen and the people apprehending that PW 7 – Laurence was an assailant apprehended him. PW 7 – Laurence explained as to who the assailant was and sent some persons to call PW 1 – Raju. A rickshaw was summoned and injured Moharam Ali was taken in the rickshaw to the YCM Hospital, where he was declared dead.

11. In cross-examination, an omission has been elicited that he had not stated in his previous statement that the witnesses had taken their dinner. Omission is also elicited that he had not stated that the appellant was under the influence of liquor. Omission is also elicited that the deceased had told the appellant not to use filthy words. Omission is elicited that he had not stated in his previous statement that the witnesses advised deceased to ignore what the appellant was saying. Omission is also elicited that the witnesses had advised the deceased to inform the

employer. He has admitted that there was no pool of blood at the place where deceased was fallen. He has also stated that the dimensions of the room were 10 x 12 ft. He has denied the suggestion that they had not witnessed the incident.

12. Prosecution has examined the other witnesses in respect of the discovery memorandum of the appellant at Exh. 29 and the consequent seizure of the knife at Exh.30. The report of the C.A. indicates that the knife was found stained with blood of "A" group which matched the blood group of deceased. Even the clothes of the appellant were found stained with same blood group.

13. Ms. Swapna Kode, learned counsel appointed for the appellant and who has ably argued the appeal has urged before us that in the light of the variations in the testimony of the eye witnesses, no reliance whatsoever could be placed on the evidence of the eye witnesses. It is further urged before us that in the light of the omissions in the testimony of the eye witnesses, no reliance whatsoever could be placed. It is also urged before us that the evidence of the panch witnesses on the point of discovery of the knife is a tented evidence and, therefore, ought to have been ignored.

Lastly, it is urged before us that the case of the appellant would fall in the fourth exception to Section 300 and the appellant would be liable to be convicted for offence punishable under Section 304 Part II of IPC. The learned APP has supported the findings arrived at by the trial court.

14. It is true that there are slight variations in the testimony of the eye witnesses. However, the magnitude of the variations is not such as would entitle the court to discard the testimony of the eye witnesses who are otherwise reliable witnesses. In fact, it is extremely unnatural to expect identical versions in respect of the sequence and the incident from two or more eye witnesses. If several eye witnesses are examined by the prosecution, there are bound to be minor variations in their evidence. At times, the variation itself is an indication of genuineness and truthfulness of the testimony of the eye witnesses. In any event, in the light of the minor variations, according to us, the trial court has not committed any error in placing implicit reliance on the testimony of the eye witnesses. Even if the evidence of discovery is left out of consideration, the overwhelming evidence of the eye witnesses clearly proves the offence against the appellant beyond reasonable doubt.

15. In our opinion, the case of the appellant would not be covered by the fourth exception. Initially, there was a quarrel and there was a scuffle. Deceased was taken out of the room by his friends i.e. the eye witnesses. The fight between the appellant and the deceased had ended much prior to the deceased again entering the room for wearing chappals. The appellant was annoyed as the deceased intended to inform the behaviour of the appellant to their employer. The appellant, therefore, took a knife and stabbed the deceased. The appellant had stabbed the deceased thrice, as a result of which the deceased received sever injuries which ultimately proved to be fatal. The ferocity and the intention of the appellant is writ large in the act of the appellant in stabbing the deceased thrice. The deceased was pronounced dead when he was examined by the Medical Officer. We thus find that the appellant had not inflicted the injuries in a sudden fight in the heat of the moment. There was no fight at that point of time when the appellant had stabbed the deceased. The case of the appellant, therefore, would not fall in the fourth exception.

16. Having thus considered the evidence on record, in our opinion, there is no merit in the appeal and the appeal deserves to be dismissed.

17. Accordingly, Criminal Appeal No. 1199 of 2004 is dismissed, confirming the conviction and sentence of the appellant.

We quantify the fees payable to the learned counsel appointed for the appellant at Rs.5000/-.

(DR. SHALINI PHANSALKAR-JOSHI,J.)

(P. V. HARDAS,J.)