

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.1023 OF 2013

Sumit Ramesh Yadav]
Age : 33 years, Occu : Labour]
R/o. At laghuwa, P.Stn-Bhagrahi,]
Post-Kakda, Tal-Barbhatiya,]
Dist.Balesha, State-Orissa]
& Golmandir, Bhendi Bazar,] Appellant
Mumbai.] (Original
Accused)

V/s.

The State of Maharashtra] Respondent

Mrs.Nasreen Ayubi, Appointed Advocate, for the
Appellant

Mrs.V.R.Bhosale, APP, for the Respondent – State

**CORAM : SMT.V.K.TAHILRAMANI &
SMT.I.K.JAIN, JJ.**

DATE : 14TH JANUARY, 2015

JUDGMENT (PER SMT.I.K.JAIN, J.)

. The appellant/original accused has
preferred this Appeal against the Judgment and
Order dated 07.05.2013 passed by the learned

Ad-hoc Additional Sessions Judge, Sewree, Mumbai in Session Case No.292 of 2011. By the said Judgment and Order, the learned Ad-hoc Additional Sessions Judge convicted the appellant under Sections 394 read with 397 and 302 of the Indian Penal Code. The appellant was sentenced to suffer rigorous imprisonment for ten years and to pay fine of Rs.1,000/-, in default, to suffer further rigorous imprisonment for one year for the offences punishable under Sections 394 read with 397 of the Indian Penal Code. He was sentenced to suffer life imprisonment and to pay fine of Rs.1,000/-, in default, to suffer further rigorous imprisonment for one year under Section 302 of the Indian Penal Code. Both the substantive sentences were to run concurrently. The appellant was, however, acquitted of the offences punishable under Sections 120-B and 377 of the Indian Penal Code.

2. The prosecution case briefly stated is as under :-

Incident occurred in the midnight intervening 10.11.2010 and 11.11.2010 near Khada Parsi statue at Byculla, Mumbai. Deceased was one Michel alias Das. According to the prosecution, appellant/accused along with absconding accused viz. Kalya alias Ramesh Lalu Meena, Ravi alias Raja Sarang Londhe and Ajay alias Santosh Ashok Deshmukh carried deceased Michel alias Das from Kamathipura when he was coming down from the brothel at around 10:00 p.m. on 10.11.2010. They offered him country liquor at Pila House. Thereafter, they took him to Byculla bridge. Michel was carrying with him Rs.1,00,000/- that time. Accused made Michel to get down from the taxi. Thereafter, they robbed him. Michel was under the influence of liquor and tried to resist the robbers. So appellant/accused with absconding accused

assaulted Michel by means of Knife and Chopper.
It was at around 12:00 in the midnight.

3. On 11.11.2010 Police Naik PW-1 Mahadeo Jayram Ludabe attached to Sir JJ Marg Police Station was on duty on Mobile Van No.I. At 12:00 noon he received wireless message from south control room that near Khada Parsi statue area, a dead body of one male person was lying. On receiving message, Police Naik along with other policemen reached the spot. They found that one dead body of a male aged about 25-30 years was lying in the shrubs at Barkley Palace Railway Colony near Railway bridge. The clothes on dead body were full of blood. There were multiple injuries on the person of dead body. Police Naik Ludabe then lodged complaint against unknown assailant. PSI Prakash Kalange visited the spot and prepared inquest panchanama. Then dead body was sent for post mortem. During investigation,

statements of eye witnesses came to be recorded. Test identification parade was conducted by Special Executive Magistrate PW-6 Smt.Shilpa Suresh Rane on 23.02.2011. Blood stained clothes and a knife were seized. Part of the robbed amount was recovered at the instance of appellant/accused. Seized muddemal was forwarded to Chemical Analyzer. Post Mortem report was collected. On completion of investigation, charge sheet came to be filed against appellant/accused alone as other three assailants were absconding. Then case was committed to the Court of Sessions.

4. Charge was framed against the appellant/accused under Sections 120B, 392, 394, 377 and 302 of the Indian Penal Code. Appellant/accused pleaded not guilty to the said charge and claimed to be tried. His defence was of total denial and false implication. On going

through the evidence of prosecution witnesses, learned Ad-hoc Additional Sessions Judge convicted and sentenced the appellant as stated here-in-before. Hence, this Appeal questioning the correctness of Judgment of conviction and Order of sentence.

5. We have heard the learned Advocate for the appellant/accused and learned APP for the respondent/state. After giving our anxious consideration to the facts and circumstances of the case, submissions advanced by the learned Advocates for parties, evidence on record and the Judgment delivered by the trial Court, we are of the opinion that the prosecution has proved the case beyond reasonable doubt and the Appeal has no merits for the reasons stated below.

6. The prosecution case revolves around the evidence of two eye witnesses PW-4 Rafiq Hasam Shaikh (Exh.14) and PW-5 Laddan Lallan Khan (Exh.17). The learned trial Judge did not rely upon the testimony of PW-5 Laddan Khan on the ground that he was social worker in the area and used to visit Sir JJ Marg Police Station but did not inform the police about the incident. The conduct of this witness was found unnatural by the trial Court and his evidence was discarded. We do not find any reason to interfere with the finding recorded by the trial Court in disbelieving the evidence of PW-5 Laddan Khan.

7. PW-4 Rafiq Shaikh stated that on 10.11.2010 at 8:00 p.m. he along with Laddan Khan went to Mahim Dargah. Both of them were coming back at 12:00 midnight. They got down at Byculla Station and walking towards their

house. When they came near Khada Parsi signal, they saw four persons assaulting one person. They tried to intervene but one of them gave threats to Rafique and Laddan on the point of knife uttering that they should not interfere as it was their private dispute. Rafique and Laddan were very much frightened. They proceeded ahead. They heard the person being assaulted screaming. So Laddan asked Rafique to see what the assailants were doing with that person. By that time those persons carried the person who was being assaulted beyond Railway compound. Rafique then leaned beyond the wall and saw that two of them caught hold and two were assaulting the person with Knife and Chopper. It is specifically stated by Rafique that appellant/accused stabbed the person on his abdomen by means of Knife. He identified appellant/accused in the course of test identification parade conducted by Special

Executive Magistrate and also before the Court. Nothing otherwise could be elicited in the piercing cross-examination of PW-4 Rafique. The only ground on which his testimony is assailed is delay in recording his statement. It appears that statement of Rafique was recorded by Police Inspector Santosh Bagave on 26.11.2010. Rafique has stated in his evidence that they were frightened and so they did not disclose the incident to anyone. There was no reason for this witness to state a lie. His evidence was found to be reliable and convincing and based on the evidence of PW-4 Rafique, trial Court came to the conclusion that prosecution has proved the case beyond reasonable doubt.

8. In addition to the testimony of an eye witness PW-4 Rafique Shaikh, prosecution relied upon the testimony of PW-11 Dr. Mrs.Sunanda Ravindra Katke, Medical officer on duty at

J.J.Hospital at the relevant time. She performed Post Mortem and found seven stabbed wounds on the person of deceased ranging from 3 c.m. to 13 c.m.. In all 12 ante-mortem injuries were found on the body. The cause of death of deceased opined by medical officer was due to multiple injuries and stabbed wounds. Appellant/accused has not seriously disputed the cause and mode of the death.

9. Another witness examined in the case is PW-3 Jafar Ismail Babu Shaikh. It is the prosecution case that deceased was carrying Rs.1,00,000/-. Four assailants robbed him and appellant/accused received his share of Rs.25,000/-. He kept that amount with PW-3 Jafar Shaikh. According to PW-3 Jafar Shaikh after few days accused took away Rs.18,000/-. Thereafter, police brought the accused to him. Appellant/accused asked Jafar to produce a sum

of Rs.7,000/- which remained with him. Jafar handed over Rs.7,000/- to police at the instance of appellant/accused. The testimony of Jafar is attacked on the ground that many Criminal cases filed by Sir J.J.Marg Police Station including MCOCA case are pending against him. The trial Court observed that this cannot be a reason to reject the testimony of PW-3 Jafar Shaikh as it is corroborated by panch witnesses PW-8 Subhash Waman Shirsat and PW-10 PI Santosh Amtaram Bagave. The evidence of PW-3 Jafar Shaikh, PW-8 Subhash Shirsat and PW-10 Santosh Bagave was found consistent and reliance was placed on the same.

10. In the light of the above we find that there is clinching evidence against the appellant/accused. Appeal being devoid of merits stands dismissed.

11. We quantify legal fees to be paid by the High Court Legal Services Committee to the appointed Advocate Mrs.Nasreen Ayubi at Rs.5,000/-.

(SMT.I.K.JAIN,J.)

(SMT.V.K.TAHILRAMANI, J.)