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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1085 OF 2005

Arjun Gangaram Kamble
Age 25 years, Occ: Nil
Residing at Ramnagar "A" Vibhag
Kamble Chawl, Room No.446-11/A
Ghatkopar (West)
Mumbai 400 086

.. Appellant

Vs.

The State of Maharashtra

.. Respondent

None for the appellant.
Mrs. Sangeeta D. Shinde, APP for State.

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

MARCH 23, 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.10,000/-, in default of which to undergo RI for one year, by the Additional Sessions Judge, Greater Bombay, by judgment dated 3/9/2005, in Sessions Case No. 944 of 2004, by this appeal challenges his conviction and sentence.

2. None appears on behalf of the appellant, though this appeal is called out twice. With the assistance of the learned APP, therefore, we have perused the evidence recorded against the appellant and since on its perusal we find that the appellant is entitled to be given the benefit of doubt, this judgment is dictated.

3. Such of the facts as are necessary for the decision of this appeal may be stated thus:-

PW 4 – PSI Suryakant Kamble, who, on 14/8/2004, was attached to the Park Site Police Station, received information about injured lying on the road and after informing his superiors, proceeded to the scene of the incident. On reaching the scene of the incident, he noticed the injured lying on the road and, therefore, shifted him to Rajawadi Hospital, where the Medical Officer, on examining the injured, declared him dead. Statement of PW 1 – Indurao was accordingly recorded and on the basis of the said statement, an offence was registered. Inquest panchanama of the dead body of deceased Jitendra was drawn and his clothes were seized under seizure memo at Exh. 14. The scene of the incident panchanama was

drawn in the presence of panchas at Exh. 10. The dead body was referred for postmortem examination and further investigation was then handed over to PW 5 – PI Kadam.

PW 5 – PI Kadam, who was entrusted with the investigation of this case on 15/8/2004 took over the investigation. The appellant had already been arrested by API Dongre under an arrest panchanama at Exh.11. Memorandum of the accused was recorded by API Dongre and weapon of assault was seized under the panchanama at Exh. 16. The seized property was referred to the Chemical Analyzer under requisition at Exh. 19. Further to the completion of investigation, a charge-sheet against the appellant was filed.

Postmortem on the dead body of deceased Jitendra was performed by Dr. P. S. Bagul, Medical Officer of the Rajawadi Postmortem Centre, Ghatkopar, Mumbai. According to the Medical Officer, deceased Jitendra had sustained the following external injuries :-

- (i) Incised wound left side para-sternum oblique direction upward size 4 cm. x 2.75 cm., edge sharp, subcutaneous

hemorrhage deep out section underneath sternum perforated and deep into the medias-time, pericardium ruptured, size 2.5 cm. x 0.5 cm., deep perforating the heart, arterially vertical size 2.5 cm. x 0.5 cm., sharp edge and giving posteriorly and cutting the post myocardium size 2 cm. x 0.5 cm. and upto post throax wall, blood clot in pericardium sac 100 cm.

- (ii) Incised wound, left side lateral dorsal spine, 8-9 level 2 cm away size 3 cm. x .75 cm. to deep upto muscle deep, hemorrhage, blood clot.
- (iii) Incised wound left side para-spiral below no.2 injury, size 2 cm, .75 cm. x sharp edges, deep into muscle hemorrhage.
- (iv) Incised wound left deltoid region post laterally, size 3 cm x 2 cm x oblique direction, muscle deep, hemorrhage.
- (v) Incised wound left side chest lateral and mid axillary line, 3 cm. x 2 cm. oblique and deep into medias-time, cutting the intercostal 5th 6th space size 3 cm. x 1.5 cm. and perforating pleura and lungs size 2 cm x 1 cm, hemorrhage.

On internal examination, he had noticed two perforation over post rib cage in 5th - 6th space intercostal with costal muscle laceration with hemorrhage over ruptured area left side. There was a laceration to the left side lung middle lobe 2 cm x 1 cm with hemorrhage. There was also rupture of the pericardium. Heart was ruptured through and through 2.5 cm. x 0.5 cm. deep and post 2 cm. x 0.5 cm. The Medical Officer had opined that deceased had died due to heart perforation with lung perforation with sever hemorrhage in case of stab injury. The postmortem report is at Exh. 13.

4. On the case being committed to the Court of Sessions, trial court 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 five witnesses. The prosecution has examined PW 1 – Indurao and PW 2 – Deepak as an eye witnesses to the incident.

5. PW 1 – Indurao deposes that deceased Jitendra was his brother. The relations between the deceased and the appellant were not

cordial as there was some quarrel during the Navratri period. On the next day of Navratri, the deceased was assaulted by the appellant and his other associates by cricket stumps and bats. A complaint case was filed at the Vikroli Court. The appellant and the other accused were insisting for withdrawal of the said case, but since the case was not withdrawn, the accused had threatened the deceased. In respect of the incident, PW 1 – Indurao deposes that on 14/8/2004 at about 9 ap.m., the appellant and another accused accosted the deceased and threatened him with dire consequences in the event the case was not withdrawn. According to PW 1 – Indurao, he had followed his brother and had seen the appellant assaulting deceased by a knife. PW 1 – Indurao cried out for help, but none of the nearby residents came to his aid. He then, with the assistance of PW 2 – Deepak and one Navnath Kharade shifted injured Jitendra to the hospital in a rickshaw. The injured was declared dead on being examined by the Medical Officer at the Rajawadi Hospital. Statement of PW 1 – Indurao was recorded at Exh. 9.

6. In cross-examination, he has admitted that on the basis of the complaint of the appellant, deceased Jitendra was convicted for offence punishable under Section 307 of IPC. He has also admitted that no

complaint had been lodged at the police station regarding the threats given by the appellant. He has admitted that on the day of the incident, several people were in and around the toilet block where the deceased was assaulted. Indurao has admitted that when the deceased had left for answering the call of nature, Indurao was about to take his bath and had followed the deceased within five minutes. He has admitted that he had not attempted to intervene or separate the assailants. Omission is elicited that he had not stated that since there was a panic, none of the nearby residents had come to his aid. He has admitted that he was assisted by PW 2 – Deepak and Kharade, who had arrived at the scene of the incident on hearing his cries. He has admitted that his clothes and the clothes of the other witnesses were stained with blood when they carried the injured to the hospital.

7. Prosecution has examined PW 2 – Deepak, who deposes that on the day of the incident at about 9.15 p.m., he had heard the cries of PW 1 – Indurao and, therefore, had rushed to the scene of the incident and had noticed injured lying at the scene of the incident with injuries. He along with PW 1 – Indurao shifted the injured to the Rajawadi Hospital in the rickshaw. In cross-examination, he has admitted that one Kharade had also

followed him to the scene of the incident. He has admitted that the clothes of PW 1 – Indurao as well as the clothes of PW 2 – Deepak were stained with blood when they had carried the injured to the hospital. He has admitted that his clothes were seized by the police at the hospital.

8. The evidence of PW 4 – PSI Suryakant Kamble completely shatters the evidence of PW 1 – Indurao and PW 2 – Deepak. According to PW 4 – PSI Kamble, on receiving the information about the incident, he had arrived at the scene of the incident and had noticed the injured lying at the scene of the incident. He had accordingly shifted the injured to the Rajawadi Hospital. PW 4 – PSI Kamble makes no reference to the presence of PW 1 – Indurao or PW 2 – Deepak at the scene of the incident. In our opinion, therefore, no reliance can be placed on the evidence of PW 1 – Indurao and PW 2 – Deepak that PW 1 – Indurao had witnessed the assault on Jitendra and thereafter with the assistance of PW 2 – Deepak had carried the injured to the hospital. It is apparent to us that PW 1 – Indurao had been informed about the injuries sustained by Jitendra and thereafter had gone to the hospital where his statement was recorded. It is apparent that PW 1 – Indurao is not an eye witness to the incident.

9. Prosecution has examined PW 3 – Satish, a panch to the discovery memorandum of the appellant at Exh. 16. In the examination-in-chief, he makes no reference to the exact words used by the accused which led to the discovery. He then deposes about the accused leading the panchas and the police to the Vikroli Bus Depot and produced a knife from the hallowed portion of a tree. This witness curiously makes no reference to the knife being sealed immediately on its seizure. As pointed out by us above, this witness also does not state the statement made by the accused leading to the discovery. The evidence of PW 5 – PI Kadam is also silent on this aspect. In our opinion, therefore, the prosecution has utterly failed to prove that at the behest of the appellant, the knife was seized. The finding of the Chemical Analyzer that the knife discovered by the accused was stained with blood of “O” group will have to be ignored. There is no evidence whatsoever that the knife on its seizure was sealed and remained in that condition till it was examined by the Chemical Analyzer.

10. Thus, in our opinion, the prosecution has failed in establishing the offence against the appellant beyond reasonable doubt. The appellant, in our opinion, therefore, is entitled to be given the benefit of doubt.

11. 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.)