

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1105 OF 2005

Pappusingu @ Premkumar Ramlakhan Singh	]	
Aged 30 Yrs., Indian Inhabitant,	]	
R/o. Indira Nagar, Behind Indira Hardware,	]	
Chembur, Mumbai – 400 071	]	
At present lodged in Kolhapur Central Prison	]	 Appellant

Versus

The State of Maharashtra	]	
Thru' Chembur Police Station, Mumbai	]	 Respondent

Ms. Anjali Patil for the Appellant.

Mr. H.J. Dedhia, A.P.P., for the Respondent-State.

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

DATE : 15TH JANUARY, 2015.

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

1. The Appellant, who stands convicted for the offence punishable under Sections 302 and 324 of the IPC and sentenced to suffer imprisonment for life on the first count and RI for one year on the second count, by the Ad-Hoc Additional Sessions Judge, Sessions Court, Sewree, Mumbai vide its Judgment dated 7th October, 2005 in Sessions Case No.303 of 2004, has preferred this Appeal challenging the conviction and sentence.

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

On 16th January, 2004, in the evening at about 7:15 p.m., while PW-10 PSI Khatape was on duty as a Station Officer at Chembur Police Station, he received information from Shatabdi Hospital that one injured person was admitted in the hospital and he has succumbed to the injuries. Therefore, along with the staff, he reached Shatabdi Hospital within fifteen minutes and made enquiry with the O.P.D. and came to know that injured Ajaykumar has already succumbed to the stab injury, whereas, the other injured person PW-1 Arunkumar, his brother, was being treated in the hospital for injury to his hand.

3. In the hospital itself, PW-10 PSI Khatape recorded the complaint of PW-1 Arunkumar and on the said complaint, registered C.R. No.20 of 2004 for the offences punishable under Sections 302 and 324 of the IPC against the Appellant. He then conducted the Inquest Panchnama (Exhibit-24) on the dead body of deceased Ajaykumar and collected the blood stained clothes on the dead body. He thereafter referred the dead body for post mortem.

4. From the hospital, PW-10 PSI Khatape went to the spot of incident and made Scene of Offence Panchanama (Exhibit-17). Thereafter he returned to the Police Station and recorded the statements of the witnesses, namely, PW-3 Kamleshkumar Singh and PW-7 Rajesh Chourasiya. He then sent the squads for arrest of the Appellant.

5. Further investigation was thereafter taken over by PW-11 PI Avinash Jadhav. On 17th January, 2004, on the basis of information received from the Detection Officer, he laid the trap at Mankhurd Railway Station in the evening and arrested the Appellant. During Police custody, the Appellant gave a disclosure statement on 19th January, 2004, which led to recovery of the knife from his house. He also collected the blood stained clothes of the Appellant and the knife under Panchanama (Exhibit-22). All the seized articles were sent to C.A. on 27th January, 2004. As per the C.A. Report, human blood stains were found on all the seized articles. On 18th January, 2004, he recorded the statement of another eye witness PW-6 Lalbabu Rai and after completion of due investigation, filed Charge-Sheet in the Court against the Appellant.

6. On case being committed to the Sessions Court, the Trial Court framed charge against the Appellant vide Exhibit-4. The Appellant abjured the guilt and claimed trial raising the defence of denial.

7. To prove the guilt of the Appellant, the Prosecution examined 11 witnesses including 2 eye witnesses, 2 Medical Officers, Panchas and Investigating Officers. The Trial Court accepted the evidence of PW-1 Arunkumar, the injured in the incident, and coupled with the evidence of other witnesses, held the guilt of the Appellant to be proved beyond reasonable doubt for both the offences and convicted and sentenced him as stated above.

8. Prosecution has relied on the evidence of PW-8 Dr. Bhimrao Brahmane, who was attached to Rajawadi Hospital and has conducted the autopsy on the dead body of Ajaykumar in between 12 noon to 2 p.m. on 17th January, 2004. According to his evidence, the dead body was having stab wound on abdomen and the deceased has succumbed to that wound on 16th January, 2004 at about 7:15 p.m. at Shatabdi Hospital. He found following injuries on the dead body :-

- (a) Incised stab wound on abdomen 6 cm above humlbilicus on mid-line more on left side oblique.

Size of injury on abdomen 7.5 cm x 3 cm both angles were sharp. The injury was abdominal cavity deep, fresh blood present. Omentum and coils of intestines protruding out.

On dissection :- skin, rectus sheath, rectus muscle cut.

Omentum was cut, size 3 cm. x 1 cm.

Abdominal Aorta cut, size 2.5 cm. Approx. - 1200 ml. Blood and clot was present in the abdominal cavity.

The direction of stab wound on abdomen antero – posterior obliquely upwards towards vertebral column, total depth was 14 cm.

(b) Incised wound on left arm posteriorly above elbow joint, oblique, size – 4 cm x 2 cm x muscle deep both angle acute reddish in colour.

(c) Incised wound on left arm anteriorly middle, size 4 cm x 0.2 cm x skin deep – reddish in colour.

(d) Incised wound on left forearm below elbow joint, size 4 cm x 0.2 cm x skin deep reddish in colour.

9. On internal examination, he found abdomen wall was injured. The peritoneum injured and haemorrhage in small and large intestine and near gall-bladder.

10. According to him, the cause of death was *“haemorrhage/shock due to stab wound of abdomen”*. In his evidence before the Court, he has

deposed that the injury found on the stomach was on the vital part of the body and sufficient in the ordinary course of nature to cause the death. He has further opined that these injuries are possible due to the blow of knife, the Muddemal Article No.7, which was shown to him in the Court. Nothing of substance is elicited in his cross-examination to disbelieve his opinion and his evidence. The Post Mortem Note (Exhibit-28) thus goes to prove the homicidal death of deceased Ajaykumar.

11. Then there is evidence of PW-9 Dr. Janardan Sejwalkar, who has examined PW-1 injured Arunkumar in Casualty Ward of Shatabdi Hospital on 16th January, 2004 at about 6:55 p.m. According to his evidence, PW-1 Arunkumar was brought there along with the relatives and Police Constable and on examination of PW-1 Arunkumar, he found following injuries on his person :-

- (i) Sharp cut with partial detachment of the tip of right ring finger
- (ii) superficial incised wound right middle finger, right forearm, ventral aspect.

12. It is opined by him that the Injury No.(i) was of a grievous nature and both the injuries are possible due to assault by Article No.7-Knife. In

his presence, injured PW-1 Arunkumar has given the history of “assault by known person with stab”. He has noted the said history in the MLC Register and issued the Injury Certificate (Exhibit-31). Again his evidence has remained unshattered on record and it proves the injury caused to PW-1 Arunkumar by the sharp edged weapon like knife.

13. The Prosecution case is based on the evidence of two eye witnesses; first is PW-1 Arunkumar, the injured and the brother of the deceased Ajaykumar, who has also lodged complaint immediately after the incident. According to his evidence, he himself and his brother PW-3 Kamleshkumar were doing the business of selling bags on the road in front of Sawant Bazar at Chembur. Whereas, his brother Ajaykumar, since deceased, was doing the business of selling plastic cutlery items on the road at the same place. Appellant was also doing the business of selling bags adjacent to them on the road. PW-1 Complainant and the Appellant, both, are from Uttar Pradesh.

14. According to his evidence, on 16th January, 2004, some quarrel took place between the deceased and the Appellant on the count that PW-3 Kamleshkumar had consumed the liquor at the instigation of Appellant. This quarrel had taken place at Tembe Bridge and PW-1 Arunkumar was informed about it by his brother Ajaykumar when he returned to the

business place after the said quarrel. As deposed by PW-7 Rajesh, this quarrel had taken place at about 6:15 p.m.

15. The incident giving rise to the present case took place at about 6:45 p.m. on the same day when Appellant came to the place of business where PW-1 Arunkumar was present. The Appellant kicked the cutlery items of the deceased. Thereupon PW-1 Arunkumar asked the Appellant what has happened and without saying anything, the Appellant inflicted on PW-1 Arunkumar blow of knife in his hand. As a result, PW-1 Arunkumar sustained injuries on the fingers as well as on his right hand and due to blow injury, the blood was oozing from the wound. At that time, the deceased was standing on the back side. Appellant went near the deceased and penetrated knife in his stomach. The deceased fell down due to the blow. The Appellant left giving threats to the persons present there that *if anybody intervenes, he may inflict knife blow (koi beech mein aayega to gusadunghe)*". Thereafter, PW-1 Arunkumar called some persons for help and then took his brother Ajaykumar to Shatabdi Hospital in the rickshaw, where he was declared dead. PW-9 Dr. Sejwalkar treated his injury and there itself, according to his evidence and then his complaint (Exhibit-15) came to be recorded in the hospital itself. In evidence before the Court, he has identified the Muddemal Article No.7 Kinife with which the Appellant has made the assault.

16. In his cross-examination, some suggestions are put to him that it was his brother PW-3 Kamleshkumar, who had come there with knife and while snatching knife from the hands of PW-3 Kamleshkumar, he sustained injury to his hand and when Ajaykumar tried to intervene, he sustained the injury to his stomach. These suggestions are denied by him and there is no material on record to support these suggestions. Except for the same, nothing worthwhile is elicited in his cross-examination to disbelieve him.

17. The presence of PW-1 Arunkumar at the spot is natural. There is immediate disclosure of the incident by him. He was also injured in the same incident. He was knowing the Appellant since prior to the incident and, as admitted by him, there was no enmity as such between them. His evidence is also getting complete support and corroboration from the prompt lodging of the F.I.R. The incident has taken place at about 6:45 p.m. and the F.I.R. came to be lodged and registered at 7:15 p.m. Therefore, his evidence is of sterling worth and in itself can be sufficient to prove the guilt of the Appellant.

18. If at all any further corroboration is required to his testimony, then there is evidence of PW-6 Lalbabu and PW-7 Rajesh. PW-6 Lalbabu is

also doing business of selling fruits in front of Sawant Bazar market since last twelve years and hence he is knowing the deceased, injured and the Appellant. According to him, on the date of incident, at about 6:15 p.m., when he had gone for a urinal at common wash-room below the Tembe Bridge, he saw scuffle between the Appellant and deceased Ajaykumar. Thereafter again at 6:45 p.m., he saw some crowd gathered near the business place of PW-1 Arunkumar. There Appellant was holding knife in his hand and he gave blow of knife to PW-1 Arunkumar. When deceased came to intervene, Appellant gave knife blow on the stomach of the deceased also. Thereafter Appellant left giving threats and pointing out knife to the public threatening them not to intervene. Then this witness along with PW-1 Arunkumar took the deceased to Shatabdi Hospital. He has identified the Muddemal Article No.7 Knife before the Court.

19. The only ground on which the Trial Court has disbelieved his evidence is that his statement was recorded on 18th January, 2004, i.e. two days after the incident, and, therefore, according to the Trial Court, there was a delay in recording of his statement. However, the cross-examination of this witness goes to reveal that Police had made enquiries with him on 17th January, 2004 and his statement was recorded on that day at about 8 p.m. Police had also made enquiry with him on 18th January, 2004. Thus, it is not that he has not disclosed the incident on his

own or there was any delay in recording of his statement. The incident has taken place on 16th January, 2004 at about 6:45 p.m., enquiry was made with him by Police on 17th January, 2004 and actual statement was reduced into writing on 18th January, 2004. Therefore, there is no reason to disbelieve his evidence on the ground of alleged delay.

20. The second ground on which the Trial court has not placed implicit reliance on his testimony is that he has stated that PW-1 Arunkumar did not receive any injury in the assault. However, this fact cannot disprove his presence. It may be that as injury was on the finger of PW-1 Arunkumar, this witness might not have noticed the same but that cannot be a ground to disbelieve him as there is nothing on record to show that he is an interested witness. His presence on the spot is natural one as he is having business in the same area and most importantly his evidence that he saw Appellant first giving knife blow to PW-1 Arunkumar and thereafter to deceased is not shaken in any way.

21. PW-7 Rajesh is examined on the point that some quarrel had taken place between the Appellant and deceased at 6:15 p.m. below Tembe Bridge. As regards the actual incident of assault with knife, he has stated that he saw deceased Ajaykumar trying to enter into rickshaw having injury in his stomach. Therefore, he has not seen the actual incident of

assault and he has remained honest to that extent. His evidence is, however, relevant as regards the previous incident of quarrel between the deceased and the Appellant below Tembe Bridge.

22. There is also the recovery evidence of the knife and blood stained clothes of the Appellant at his instance, under Section 27 of the Evidence Act, proved through the evidence of PW-4 Panch, Goga More and PW-11 Investigating Officer PI Jadhav. The blood stained clothes of the Appellant and the knife were sent to C.A. and as per the C.A. Report, human blood stains were found on the clothes and also on the knife.

23. In the light of this overwhelming evidence on record, we have no hesitation in coming to conclusion that the Prosecution has succeeded in proving that the Appellant has caused homicidal death of Ajaykumar by assaulting him with knife and voluntarily caused hurt to PW-1 Arunkumar with dangerous weapon like knife. At this stage, submission of Ms. Anjali Patil, the learned Counsel for the Appellant, is that this Court may consider that the case of Prosecution falls under Section 304, Part II of the IPC in view of the evidence relating to earlier quarrel between the deceased and the Appellant. We have no hesitation in rejecting this plea because the case cannot in any way fall under Exception IV to Section 300 of the IPC. The earlier quarrel had taken place half an hour before the

actual incident of assault at Tembe Naka. Thereafter Appellant has come to the business place of the deceased armed with knife. He has then inflicted the blow of knife on the vital part of a body like stomach with such force that deceased succumbed to the injury instantaneously on the spot. Hence, there is no question of case falling under Part II of Section 304 of the IPC.

24. We, therefore, confirm the Judgment of the Trial Court convicting the Appellant for the offences punishable under Sections 302 and 324 of the IPC. The Appeal, therefore, holds no merit and, accordingly, stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

[P.V.HARDAS, J.]