

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1189 OF 2006

Hariram Ranjeet Yadav,	]	
Age : 35 Yrs., Occ.:	]	
R/of Laxmi Nagar, Link Road,	]	
Goregaon (West), Mumbai	]	 Appellant

Versus

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

Dr. Yug Mohit Chaudhary for the Appellant.

Mrs. Sangeeta D. Shinde, A.P.P., for the Respondent-State.

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

DATE : 31ST MARCH, 2015.

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

1. The Appellant, who stands convicted by the 6th Ad-Hoc Additional Sessions Judge, City Sessions Court, Sewree, Mumbai in Sessions Case No.591 of 2005 by Judgment, dated 15th February, 2006, for the offences punishable under Sections 302 and 201 of the IPC and sentenced to suffer imprisonment for life, by this Appeal challenges his conviction and sentence.

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

On 17th May, 2005, at about 6:15 am, while PW-13 PSI Sadashiv Pawar was on duty as SHO at Goregaon Police Station, he received message from Police Control Room that the dead body of one person was lying in a lane on the back side of the Mosque in Laxmi Nagar area. He informed about this message to his Senior Police Officer PW-17 PI Vasant Zunjare. Then, along with PW-17 PI Zunjare and PW-1 PN Bhausahab Phad, he went to the spot. At the spot, they found the dead body of one person lying with injuries on his body. They tried to ascertain identity of the said person, but could not gather any information about his name and other details. However, considering that it was a case of homicidal death, on the complaint (Exhibit-10) of PW-1 PN Phad, C.R. No.287 of 2005 was registered by PW-13 PSI Pawar against the unknown person.

3. After making Inquest Panchanama (Exhibit-22) of the dead body, PW-13 PSI Pawar referred the dead body for postmortem examination to Cooper Hospital. He then drew Scene of Offence Panchanama (Exhibit-24) in the presence of PW-8 Panch Suresh Jaiswal.

4. Further investigation of the case was entrusted to PW-17 PI Vasant

Zunjare. On 19th May, 2005, he recorded the statements of 5 witnesses and on the basis thereof, arrested the Accused under Panchanama (Exhibit-17). By the said Panchanama, he also seized clothes of the Accused in the presence of PW-5 Panch Udayraj Yadav. During police custody, on 20th May, 2005, the disclosure statement of the Accused came to be recorded in the presence of PW-6 Panch Basraj Awada. The Memorandum Panchanama of the disclosure statement was made vide Exhibit-19. Thereafter, Accused guided the Police and Panchas to the drainage area at S.V. Road and from the drainage, he produced one cloth bag, from which the weapon of assault, the chopper, came to be produced by him. It was seized under Panchanama (Exhibit-20). On 21st May, 2005, PW-17 PI Zunjare again interrogated the Accused. Accused gave a disclosure statement that he will produce the blood stained clothes of the deceased, which he has kept in one plastic bag near the creek. The Memorandum Panchanama (Exhibit-27) was made of the disclosure statement of the Accused in the presence of PW-10 Panch Arjun Gaikwad. Thereafter, Accused guided the Police and Panchas to the spot near the creek and produced one plastic bag, which was containing the clothes of the deceased and the articles like tuls-mal and chappal. These articles were seized under Panchanama (Exhibit-28).

5. PW-17 PI Zunjare showed these articles to PW-15 Chandrabhan

Yadav, the nephew of the deceased, who identified them. The said Panchanama was made vide Exhibit-30 in the presence of PW-11 Devendra Patel. All these seized articles were sent to Chemical Analyzer on 31st May, 2005 vide letter (Exhibit-41). The C.A. Reports are produced on record at Exhibits “42” to “45”. The Postmortem Report is enclosed at Exhibit-14. Further to completion of investigation, the Charge-Sheet was filed in the Court against the Accused.

6. On case being committed to the Sessions Court, the Trial Court framed charge against the Accused vide Exhibit-4. The Accused abjured the guilt and claimed trial. In support of its case, Prosecution examined in all 17 witnesses and on appreciation of their evidence, the Trial Court convicted and sentenced the Accused, as aforesaid.

7. This Judgment of the Trial Court is the subject matter of this Appeal. We have heard learned Counsel for the Appellant, who has pointed out serious infirmities in the Judgment of the Trial Court, whereas, learned A.P.P. has made a faint attempt to support the said Judgment. In our considered opinion, before adverting to their rival submissions, it would be useful to refer to the evidence on record.

8. To prove the homicidal death of deceased, the Prosecution has

examined PW-4 Dr. Shantaram Chauhan, who has conducted postmortem examination on the dead body and he found following external injuries on his person :-

- (I) *Incised wound 9.5 x 2 cm. Total trachea cut over anterior aspect of neck below thyroid cartilage horizontally.*
- (II) *Incised wound 6 in number over posterior right aspect of neck in oblique and haphazard measuring from top to bottom a b c d e f.*
 - (a) *7 cms x 1 cm x muscle deep*
 - (b) *4 cms x 4 cms*
 - (c) *3 cms x 4 cms*
 - (d) *7 cms x 4 cms*
 - (e) *7 cms x 1 cm x muscle deep*
 - (f) *8 cms x 4 cms x skin deep*
- (III) *Incised wound 2.5 cms x 1.5 cms x 1 cm over right suprascapular region of back oblique.*
- (IV) *Incised wound 1 cm x 4 cms over right lateral aspect of right arm lower half near elbow horizontal.*
- (V) *Incised wound horizontal 8 x 1 x muscle below 6 cm of right ear lobule.*
- (VI) *Incised wounds over right parietal region of head 3 in number oblique in direction 8 x 1 cm x 1 cm, 7 x 1 x 1 cm, 6 x 1 x 1 cm. All injuries bone deep about right ear.*
- (VII) *Incised wound 12.5 x 3.5 x 2 cm over left cheek oblique just below lateral canthus of eye, cutting left lobule of ear (bone deep).*

9. On internal examination, he found following injuries :-

- (I) *Incised wound over scalp 7 cms, 5 cms, 4 cms sharp edge (pointed edge on one side).*
- (II) *Fractures skull bone (a) 4 cms, (b) 5 cms, (c) 7 cms.*
- (III) *On examination of brain, he found decomposition started.*

10. He has noted these injuries in column Nos.17 and 19 of the Postmortem Report (Exhibit-14). According to him, all these injuries were antemortem and sufficient in the ordinary course of nature to cause the death. He has further opined that these injuries are possible by Muddemal Article No.8-the chopper, which, as per Prosecution case, came to be recovered at the instance of the Accused. In his opinion, the cause of the death was *"haemorrhage and shock due to multiple injuries"* and the approximate time of the death was before 24 hrs. to 48 hrs. of receiving the body in Cooper Hospital on 18th May, 2005 at 5:15 pm. There is absolutely no cross-examination of this witness and hence it has to be held that Prosecution has proved that deceased had succumbed to homicidal injuries.

11. To prove the complicity of the Accused in the said offence, Prosecution has relied upon the evidence of PW-2 Abdul Kaum and PW-3 Lalbahadur Yadav. As per the evidence of PW-2 Abdul, on 16th May, 2005,

at about 11:30 pm, after closing his bakery, when he was returning to the house, he saw one person having long hair and beard passing from the adjoining lane of his bakery. He was looking like a *Sadhu*. On the next day, i.e. 18th May, 2005, when he came to open the bakery at about 5:30 am, he saw the public gathered to the back side of the Mosque. Therefore, he went there and saw the same person having long hair and beard in injured condition lying there. In short, he is not an eye witness to the incident. He even does not know the deceased. Moreover, though Prosecution is relying on his evidence to prove that the deceased was last seen by him, according to him, he saw the deceased on 16th May, 2005 at 11:30 pm, whereas, the dead body of the deceased was found on 18th May, 2005 at 5:30 am. Therefore, considering the long gap of about one and a half days between his seeing the deceased and subsequent finding of the dead body, this circumstance is hardly of any help to the Prosecution. Otherwise also, his evidence does not prove the complicity of the Accused in the said incident.

12. PW-3 Lalbahadur Yadav was working as 'watchman' in Vishnu Dye Company. Deceased Muralilal was working in the store, whereas, Accused was operating machine in the said Company and, therefore, he was knowing both of them. According to his evidence, on 16th May, 2005, deceased came to the duty at 7 am. However, Accused did not report to

the duty. A telephone call was received from the Accused on that day at about 9:30 am. It was answered by the watchman Rajendra Yadav, who heard deceased talking with Accused on the phone and subsequently deceased informing Rajendra Yadav that Accused had called him at his house for taking the dinner after closing the Company. Now, admittedly, this watchman Rajendra Yadav, who has heard deceased talking with the Accused on telephone and further deceased informing him that he was called by Accused for dinner, is not examined by the Prosecution. Therefore, whatever knowledge this witness has about the talk between deceased and Accused being in the nature of hear-say, it cannot be admissible in evidence. Further, the evidence of this witness that, accordingly deceased left Company at about 10:30 pm on 16th May, 2005 is also not admissible, because this is again in the nature of hear-say. In para No.1 of his evidence itself, he has stated that his duty hours are from 7 am to 7 pm. Therefore, he is not expected to know at what time and whether really the deceased had left on 16th May, 2005 at 10:30 pm.

13. According to his further evidence, on 17th May, 2005, Accused alone came to duty, whereas, deceased did not come to duty. On that day, at about 10:30 am, Accused told watchman Rajendra Yadav that deceased had ran away somewhere after taking Rs.10,000/- from him. Again this evidence is of hear-say nature, because watchman Rajendra Yadav is not

examined by the Prosecution and this witness is not deposing that the alleged fact was stated by Accused to Rajendra Yadav in his presence. Hence, this evidence is also not admissible.

14. As per further evidence of this witness, on 17th May, 2005, Accused attended the duty till 10:30 pm. On 18th May, 2005 also, Accused attended the duty till 7 pm. If at all Accused has really committed murder of the deceased, then this fact of his attending duty on 17th and 18th May, 2005 is not consistent with the Prosecution case.

15. In cross-examination, this witness has categorically admitted that he had personally no talk with Accused on any of these three days. He had also no talk with the deceased, when he left the Company on 16th May, 2005. Further he has admitted that though he was present for the duty in the Company from 16th May, 2005 to 25th May, 2005, he did not disclose to anyone about whatever he has stated in the Court. His statement is recorded by the Police on 25th May, 2005 i.e. 9 days after the incident. No explanation is offered for the delayed recording of statement. Needless to state, that, the evidence of this witness is absolutely bereft of credibility and has to be discarded outrightly.

16. Except for the evidence of this witness, there is absolutely no

substantive evidence on record. The Prosecution has hence tried to rely upon the corroborative evidence like the Seizure Panchanama of the chopper at the instance of the Accused under Section 27 of the Evidence Act. However, this recovery evidence is again not free from suspicion. In the first place, it becomes difficult to accept that the chopper, which was thrown in the drainage, will remain for three days in the water and still have the blood stains thereon. Even as regards recovery of the clothes of the deceased, there is no evidence to prove that they were sealed with wax and remained in the same condition till their examination by the Chemical Analyzer. The evidence of PW-17 PI Zunjare goes to prove that he has shown the said clothes and articles to PW-15 Chandrabhan Yadav, thereby indicating that the seal was opened and they were not retained in the same sealed condition when they were sent to the Chemical Analyzer.

17. As regards the Seizure Panchanama of the clothes of the Accused (Exhibit-17), it becomes difficult to accept that Accused will remain in the same clothes, which he was wearing at the time of incident, even 2 – 3 days after the incident. Moreover, there is no evidence of the said clothes being wax sealed or the grouping of the blood on the said clothes matching with the blood group of the deceased. Hence, the recovery evidence, which is again of a merely corroborative nature, is also not proved by the Prosecution.

18. To sum up, therefore, it has to be held that the Prosecution has miserably failed to prove its case against the Appellant. None of the circumstance, on which Prosecution is placing reliance, is proved by cogent and positive evidence and the circumstances proved do not form a chain so complete so as to leave no other hypothesis except that of the guilt of the Appellant. The Judgment of the Trial Court, therefore, convicting and sentencing the Appellant for the offences punishable under Sections 302 and 201 of the IPC needs to be quashed and set aside.

19. Consequently, 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 offences 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.]