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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1257 OF 2006

Ravindra Sadashiv Mali
Age 24 years, Occ: Labour
R/o Yelur, Tal: Walwa
Dist. Sangli.

.. Appellant
(Org. Accused)

Vs.

The State of Maharashtra

.. Respondents

Dr. Yug Mohit Chaudhary for the appellant.
Mr. H. J. Dedhia, APP for State.

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

APRIL 01, 2015.

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

1. The appellant, who stands convicted for offence punishable under Section 302 read with Section 34 of the Indian Penal Code and sentenced to imprisonment for life and to pay fine of Rs.5000/-, in default of which to undergo RI for one year, by the 1st Ad-hoc Additional Sessions

Judge, Islampur, by judgment dated 29/11/2006, in Sessions Case No. 12 of 2006, by this appeal challenges his conviction and sentence.

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

PW 8 – Police Head Constable Patel, who was attached to the Kurlap Police Station and was on duty on 29/10/2005, recorded the report of PW 7 – Sandeep at Exh. 23. On the basis of the report at Exh. 23, offence vide Crime No. 56 of 2005 was registered. Upon registration, investigation of the said crime was entrusted to PW 9 – API Pravin Chougule.

PW 9 – API Pravin Chougule, who was also attached to the Kurlap Police Station, was entrusted with the investigation of Crime No. 56 of 2005. He thereafter proceeded to the scene of the incident and drew the scene of the incident panchanama at Exh. 10 in the presence of panchas. From the scene of the incident, sample of ordinary mud and mud mixed with blood, pair of slippers, two carpets etc. were seized. Statements of witnesses were recorded. On 4/12/2005 during custodial interrogation, the

appellant expressed his willingness to point out the place where the weapon i.e. a dagger (Kukri) had been concealed. A memorandum to that effect was recorded at Exh. 18 in the presence of panchas. The accused / appellant led the police and the panchas to village Kundalwadi and produced the dagger which had been concealed. The said weapon was seized under seizure memo at Exh. 19 in the presence of panchas. The seized articles were thereafter referred to the C.A. under requisition at Exh. 28. The reports of the C.A. are at Exhs. 29 to 32. Further to the completion of investigation, a charge-sheet against the appellant was submitted.

Postmortem on the dead body of deceased Satish was performed by Dr. Meenakshi Patil, Medical Officer, District Hospital at Islampur. The postmortem report is at Exh. 7 as it had been admitted by the accused. As per the postmortem report deceased had died due to hemorrhagic shock due to multiple stab wounds.

It appears that the appellant alone was placed for trial as the other accused were absconding. The trial court, therefore, framed charge against the appellant for offence punishable under Sections 302, 324 read with Section 34 of the IPC and a substantive charge for offence punishable

under Section 324 read with Section 34 of the IPC. The appellant denied his guilt and claimed to be tried. Prosecution in support of its case examined nine witnesses. PW 1 – Rangrao, a panch witness to the scene of the incident panchanama, PW 3 – Santosh, a witness in respect of the extra judicial confession, PW 5 – Balechand, an eye witness, PW 6 – Anandrao, a panch to the disclosure memorandum under Section 27, PW 7 – Sandeep, an eye witness and the first informant, did not support the prosecution and were declared hostile. The trial court principally relied upon the evidence of PW 2 – Police Constable Arif Mujawar.

3. We have heard Dr. Yug Mohit Chaudhary, learned counsel for the appellant and the learned APP and 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.

4. Since the only witness who supported the prosecution is PW 2 – Arif Mujawar and since he is the only witness on whom the trial court has placed reliance, it would be useful to refer to the evidence of this witness.

PW 2 – Arif Mujawar deposes that in 2003, he was attached to

the Local Crime Branch at Sangli. The Local Crime Branch at Sangli was investigating an offence under the Arms Act which had been registered against the appellant. The appellant was absconding and, therefore, the police were in search of the appellant. On 29/10/2005, PW 2 – Arif received information that the appellant was likely to come to his house at village Yelur at about 5.30 p.m. and was waiting near the office of Shiv Sena which was located in the Bazar. He was waiting for the informant to come and at that time he heard hue and cry and, therefore, rushed in that direction and noticed the appellant and his other associates stabbing one person. The moment the accused saw PW 2 – Arif, they fled from the scene of the incident. PW 2 – Arif chased them and while chasing, informed the Kurlap Police Station on his mobile about the crime. The accused, however, managed to evade PW 2 – Arif and escaped in the sugarcane crop. PW 2 – Arif returned to the scene of the incident and noticed the deceased, who was one Satish Patil. He has identified the appellant to be the same person who was the assailant.

5. In cross-examination, he has admitted that there was no written entry to show that on the day of the incident he had gone to village Yelur. He has admitted that he was not in uniform on the day of the incident as the

constable from the Local Crime Branch does not wear uniform and normally wears civil dress. He has admitted that his deposition had been recorded in Sessions Case No. 33 of 2005 i.e. the case which was registered against the appellant under the Arms Act. He has admitted that he does not know if the appellant and the other accused have been acquitted in the said case. He has admitted that Ranjeet Adke, Bhagwan Adke and Sachin Adke were the accused in the said case registered under the Arms Act. He has admitted that the appellant was never in the custody of the Local Crime Branch before the arrest of the appellant in the present crime. He has admitted that the distance between the Shiv Sena office and the Dhan Laxmi Grocery Shop i.e. the place where the incident had occurred, is about 500 to 600 ft. Omission has been elicited that he had not stated in his previous statement that he had received information about the likely visit of the accused to his house on 29/10/2005. The omission is only in respect to the word "house". He has admitted that the house of the accused is about 3-4 K.M. from the Bazar. Omission has been elicited that he had not stated that the appellant was armed with a dagger (Kukri) at the time of the incident.

6. The learned counsel for the appellant has rightly urged before us

that the presence of this witness at the scene of the incident is extremely doubtful and has also urged before us that the identification of the appellant as the assailant is doubtful. The learned APP has supported the findings arrived at by the trial court.

7. PW 2 – Arif does not claim that the appellant was acquainted with him or was known to him since long. In fact, in the cross-examination PW 2 – Arif has admitted that the appellant was never in the custody of the Local Crime Branch prior to his arrest in the present case. PW 2 – Arif has further admitted that he had witnessed the incident from a distance of about 500 to 600 ft. He has also admitted that since the assailants saw him, the assailants fled from the scene of the incident. We find that since Arif does not claim that the appellant was known to him, the identification of the appellant from a distance of 500 to 600 ft. would be rendered doubtful and cannot be made the foundation for sustaining the conviction. PW 2 – Arif is the sole witness to the scene of the incident and the evidence of PW 2 – Arif does not appear to us to be of such sterling quality as to place implicit reliance on his testimony for sustaining the conviction of the appellant. There is no other evidence which would corroborate the evidence of PW 2 – Arif and in the absence of any other corroboration, in our opinion, the

sole testimony of PW 2 – Arif is insufficient for sustaining the conviction of the appellant.

8. Learned counsel for the appellant has further brought to our notice that the co-accused of the appellant were tried subsequently in Sessions Case No. 16 of 2007 and were acquitted. The trial Judge by his judgment dated 23/10/2008 has chosen not to place any reliance on the testimony of the prosecution witnesses. In the present case, there is no evidence that a Test Identification Parade had been conducted and in the absence of such evidence, in our opinion, it would be wholly unsafe to place implicit reliance on the testimony of PW 2 – Arif.

9. The trial court has not placed any reliance on the testimony of PW 4 – Sunita Kadam in respect of extra judicial confession alleged to have been made by the appellant to her. The trial court found that the extra judicial confession had been made by the appellant to PW 4 – Sunita when he had been brought to her house accompanied by the police. Since the confession was made in the presence of the police and since the appellant was in the custody of the police, trial court has chosen not to place any reliance on the extra judicial confession made to PW 4 – Sunita.

10. We thus find that there is no evidence which would prove the offence against the appellant beyond reasonable doubt. The evidence of PW 2 – Arif does not inspire implicit confidence of the court for acceptance of the testimony of PW 2 – Arif. In our opinion, therefore, the appellant is entitled to be given the benefit of doubt.

11. Accordingly, Criminal Appeal is allowed and the conviction and sentence of the appellant is 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.)