

IN THE HIGH COURT OF BOMBAY AT GOA.
CRIMINAL APPLICATION(MAIN) NO.267 OF
2015.

State, through Pernem Police Station ... Appellant.

Vs.
Sandeep Kothavale ... Respondent.

Mr. S. R. Rivankar Public Prosecutor for the appellant.

Coram:-F. M. REIS,
K. L. Wadane,JJ.
Date:-18th January, 2016.

ORAL ORDER (Per K. L. Wadane, J)

This is an application for leave to appeal against the judgment and order dated 29.8.2015 passed by the learned Sessions Judge in Sessions Case No. 18/2013 by which the learned Sessions Judge acquitted the respondent/accused for the offence punishable under Section 302 of the Indian Penal Code, ("IPC" for short).

2. In short the case of the prosecution is that on 1.12.2012 between 14.45 hours to 15.00 hours at Aroba Dhargal, Pernem, the accused on account of previous enmity criminally trespassed into the house of the deceased abused him with filthy words and assaulted him with broken glass bottle on his abdomen thereby causing him grievous injuries resulting into death on 14.12.2012 at GMC, Bambolim where he was

undergoing medical treatment.

3. With the above allegations the accused was charged for the offences punishable under Sections 452, 504 and 302 of IPC. In order to establish the offences against the accused the prosecution has in all examined 20 witnesses and after hearing both the sides and upon the scrutiny of the oral as well as documentary evidence on record, the learned Sessions Judge has acquitted the accused by giving benefit of doubt.

4. We have heard Mr. S. R. Rivankar, learned Public Prosecutor appearing for the appellant. Perused the record. On perusal of the record, it appears that PW1 Umakant nephew of the deceased had stated that he received phone call informing that the deceased Chandrakant was assaulted by someone with glass bottles. PW4 Prashant Shetye, bar owner has deposed that the accused as well as the deceased came to his bar for drinking and there was talk between the accused and the deceased in a loud voice and thereafter both of them left the bar.

5. PW9 Pramila, Emergency medical technician who has been to the house of the deceased along with one 108 ambulance. On enquiry from the persons gathered at the spot and as well as the accused, they told that the injured had fall

from the building.

6. PW16 Shama Arondekar, a Joint Mamlatdar and PW17 Dr. Lalit Bansal has deposed about alleged dying declaration of the deceased. From the record, it is seen that the case of the prosecution is mainly rest upon the dying declaration.

7. We have carefully gone through the evidence of PW16 Shama Arondekar, who has stated that she recorded dying declaration of the deceased on 6.12.2012 by issuing a letter to the concerned Medical Officer which is at Exh.76. From the reasons recorded by the learned Sessions Judge, it appears that this letter at Exh. 76 is a xerox copy that too without any endorsement of the out ward number.

8. As against this Dr. Lalit claimed that he examined Chandrakant at 1.30a.m on 7.12.2012 and found that he was fit to give statement. This itself shows that the entire statement is manipulated. The letter is dated 6.12.2012. Executive Mamlatdar i.e Shama Arondekar claimed that she recorded the statement of the victim on 6.12.2012 at around 1.30 hours. So there is a gap of 24 hours. This infirmity is not at all explained by the prosecution.

9. To consider the reliability of the dying declaration, the learned Sessions Judge makes certain observations in the actual words used by the deceased while making dying declaration which is highly improbable like deceased himself called as Mr. Chandrakant Arabekar and one of his witness he named as Sandeep S. Kothavale at the time of giving alleged dying declaration. That the deceased was on death bed as such the language appearing in the dying declaration appears to be most unnatural so the learned Sessions Judge has rightly appreciated the evidence on record, particularly the natural conduct and the language expected in the given circumstances. Further more, the investigating Officer was constantly in touch with the medical officer and making inquiry about the physical condition of the deceased right from the admission of the deceased in the GMC.

10. On perusal of the evidence of PW19 PSI Pednekar, it appears that he has admitted during the cross examination that he tried to record the statement of the deceased Chandrakant before his death. Therefore, he was visiting GMC and asking about the condition of the Chandrakant till 6.12.2012. During those occasions Doctor informed that the injured was not in a position to give the statement, therefore he did not record the statement of the Chandrakant after 6.12.2012 till his death. Therefore, from the above admission it appears that physical

condition of the deceased was critical till his death. The learned Session Judge has rightly disbelieved the evidence of the dying declaration and rightly pointed out the unexplained inherent defect in the evidence of dying declaration. Considering the over all circumstances and the reasons recorded by the learned Sessions Judge, we do not think any different view is possible in the present matter.

11. In view of the above reasons, this is not a fit case in which leave to appeal can be granted. hence, leave to appeal stands rejected.

K. L. WADANE, J.

F. M. REIS, J.

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