

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.579 OF 2014

Rohit Mohan Dhoka
r/at: 204, Nana Peth, Hindmata Chowk
Vithal Niwas, Kirad Wada, Pune ... Appellant

Vs.

The State of Maharashtra ... Respondent

**WITH
CRIMINAL APPEAL NO.293 OF 2014**

Sachin @ Surya Vittal Bhujbal
C/16703,
Yerwada Central Prison, Pune ... Appellant

Vs.

The State of Maharashtra ... Respondent

Mr.Debjyoti Talukdar for the Appellant in Apeal/579/2014
Mr.Abhaykumar Apte, advocate appointed for Appellant in Apeal/293/2014
Mrs.A.S. Pai, APP, for State

**CORAM: SMT. V.K. TAHILRAMANI &
MRS.MRIDULA BHATKAR, JJ.**

DATE: JUNE 22, 2016

ORAL JUDGEMENT (PER MRS.MRIDULA BHATKAR, J.):

1. Appeal No.579 of 2014 is filed by Rohit Dhoka, original accused No.1 and Appeal No.293 of 2014 is filed by Sachin Bhujbal, original accused No.2. The appeals are directed against the judgment and order

dated 1.8.2013 passed by the learned Additional Sessions Judge, Pune, thereby convicting both the appellants for the offence of murder under section 302 r/w 34 of the Indian Penal Code for life and to pay fine of Rs.10,000/- each or suffer R.I. For six months. One Kavita Anil Salunke is the informant. The incident of murder of her husband Anil Salunkhe has taken place on 11.4.2011 near Race Course Empress Garden, Pune. One month prior to the date of the incident, the deceased Anil had hired the rickshaw of Sachin, i.e., the accused No.2 on rental basis. A charge of Rs.150/- per shift was agreed between them. However, this arrangement could not be worked out as the accused No.2 used to pursue him for the money and, therefore, the deceased returned the said rickshaw four days prior to the incident to the accused No.2. However, an amount of Rs.600/- was due to accused No.2. The deceased had promised him to return the said amount of Rs.600/- on 11.4.2014. On that day in the morning, accused No.2 arrived at the house of the deceased and demanded Rs.600/-. He abused him. Anil promised him to pay the money. At around 1.30pm, he told his wife that he is going out with Dhoka, accused No.1. However, he did not return home and at 9pm, she got information telephonically from one of the friends that her husband had met with an accident and has been admitted in Sassoon hospital. So, when she went there, she found one Manoj Dhamale, friend of her husband, present alongwith the police. Manoj is an eye witness to the incident. On that day,

at around 1.30pm, when he was plying his rickshaw, the accused No.1 and accused No.2 told Anil to come there and told him that they wanted to go out to take beer. Though he was reluctant, they all being friends, he took them to one bar. Except Manoj, they all had drinks. Thereafter, they travelled for some time. Then one other friend Gajanan Mule also accompanied them in rickshaw at Dhobalwadi Ghodpadi. The deceased and both the accused had consumed country liquor at 6.30pm. Manoj and Gajanan did not drink. Thereafter, when they were coming back, at the Race Course Road, accused No.2 Sachin asked him to stop the rickshaw. Accused Nos.1 and 2 and the deceased alighted from the rickshaw and went towards the Race Course compound to relieve themselves. However, Manoj suddenly heard their quarrel and screams of Anil. So, Gajanan and Manoj went there and noticed that the accused Nos.1 and 2 both were assaulting Anil. When they came near him, they found Anil was lying in a pool of blood. Accused No.2 Sachin fled away towards Empress garden and accused No.1 ran towards the Race Course. At that time, the watchman of the Race Course apprehended him and Manoj informed the police. Thereafter, the other friend informed Kavita about the incident. Anil succumbed to the injuries on the same day. Pursuant to the information given by Kavita, offence was registered at C.R. No.76 of 2011 with Vanavadi police station under section 302 r/w 34 of the Indian Penal Code. The police recorded statements of the witnesses, drew spot

panchanama. Accused No.2 was also arrested on the same day. On the next day, at the instance of both the accused, the police carried out discovery panchanama and they recovered choppers, which were the weapons used for the purpose of assault. The police also seized the clothes of the deceased and the accused and sent them for the report of C.A. After completion of investigation, chargesheet was filed in the Court of JMFC, Pune and thereafter, the case was committed to the Court of Sessions.

2. The learned Sessions Judge framed charge under section 302 r/w 34 of the Indian Penal Code and under section 135 r/w 37(1) of the Bombay Police Act. Though both the accused were acquitted from the offence under the Bombay Police Act, they are convicted for the offence of murder of Anil Salunke. The prosecution has examined a total of 9 witnesses. PW1 Kavita is the informant; PW2 Dr.Amol B. Shinde is the medical officer who has conducted the post-mortem; PW3 Manoj Dhamale is an eye witness; PW4 Sanjay Akolkar is the security guard, who apprehended accused No.1 Rohit; PW5 Namdev Kunjir and PW6 Amjad Mohd. Shaikh are the panchas on the point of recovery under section 27 of the Indian Penal Code and PW7 Pradeep P. Gaikwad is a police from Vanavdi police station, who was patrolling on the night of 11.4.2011 and took charge of accused No.1; PW8 Prasad N. Sanas is attached to Vanavadi police station in the investigation and PW9 Shivaji G. Kanase is

the Senior Police Inspector and Investigating Officer from Vanavdi police station.

3. PW2 Dr.Amol B. Shinde conducted the post-mortem and found that the death occurred due to the cut wounds on his body. He proved post-mortem report (exhibit 27). The ante-mortem injuries on the body of Anil were all incised wounds over left mandibular area so also total three chopped wounds on the left arm. He died due to shock due to multiple injuries i.e., homicidal assault. Thus, the fact that the death of Anil Salunkhe has occurred due to homicidal assault, cannot be disputed.

4. Mr.Talukdar, the learned Counsel for the Appellant/accused No.1 and Mr.Apte, learned Counsel for Appellant / accused No.2 Sachin Bhujbal, argued that the evidence of the witnesses especially of Manoj Dhamale is not reliable. Manoj claims to be an eye witness alongwith one Gajanan Mule. However, the prosecution did not examine Gajanan, the other eye witness. From the evidence of Manoj, it does not appear that Manoj himself has seen the actual assault on the deceased. The prosecution ought to have examined Gajanan who was the other available eye witness. Evidence of Manoj is uncorroborated version which appears doubtful.

5. The learned Counsel has submitted that the discovery of the weapon i.e., chopper, at the instance of the accused No.1 on 12.4.2011

from thorny bushes at Empress garden is false. Panchanama (exhibit 32 and 33) ought not to have been believed by the trial Court. The learned Counsel have pointed out that in the cross-examination the panch PW5 Namdev Kunjir has admitted that he acted as panch on 30 to 35 occasions and hence, he should not have been relied. Similarly, the evidence of PW6 Amjad Shaikh is another panch for this discovery panchanama at the instance of accused No.2 dated 12.5.2011, which is marked at exhibit 38.

6. Mr.Apte submits that the incident of assault as per the prosecution has taken place on 11.4.2011, however, accused No.2 was arrested after one month, i.e., 10.5.2011. No connection is established by the prosecution between accused No.2 and the actual assault.

7. While assessing evidence of regular or stock panch, Court needs to be cautious. If evidence of criminal record of such witness is brought on record, then, his evidence can be discarded. There is no such record of this witness Kunjir. A fact that discovery of the weapon that is chopper near the place from where the accused was apprehended is an important circumstance establishing nexus between the accused No.1 and the weapon and the spot of the incident. PW6 Amjad Shaikh on the recovery of weapon at the instance of accused No.2 also appears reliable.

8. The learned Counsel for the Appellants have further submitted that the recovery of the chopper by accused No.1 under the memo exhibit 32

and 33 is doubtful. It was submitted that the panchanama had taken place on 12.4.2011 in the afternoon. However, on the same day, the accused No.2 was produced before the Court at the time of remand in the afternoon. Therefore, considering the time gap, the discovery panchanama becomes doubtful. While assailing the evidence of PW3, the learned Counsel has submitted that he did not inform the police about the assault though he admitted the deceased in the hospital. He took Anil to the Sassoon hospital. The names of the accused were not disclosed as assailants in the hospital. Had he seen both the accused assaulting Anil, then the names of these two persons ought to have been mentioned at the time of admission of Anil Salunke in the hospital. Learned Counsel further argued that as per the evidence of PW3, he dialled 100 number and informed about the incident to the police. However, the prosecution did not produce any evidence through the police that they have received such information on 100 number. It is further argued that at the time of panchanama, articles i.e., weapons or clothes of the accused were not sealed with lac seal. The CA report is also not helpful to the prosecution.

9. In support of their submission on the point of sealing of articles by lac seal, the learned Counsel relied on **Tulshidas Bhanudas Kamble vs. State of Maharashtra**¹.

1 2000 Cri.L.J. 1566

10. On the point of appreciation of the evidence, the ratio laid down in **Mohan Singh vs. Premsingh & anr.**² is relied upon.

11. The learned Prosecutor has opposed the appeals. She submitted that the prosecution has tendered credible evidence. The eye witness PW3 Manoj Dhamale has given all the material particulars on the point of incident and his evidence remained unshaken. The prosecution has also tendered evidence on the point of discovery of weapons. There is evidence of PW4 Sanjay Akolkar who apprehended the accused No.1 on the spot. She submitted that the chain of circumstances fully corroborate the evidence of Manoj and hence, conviction of both the accused be maintained.

12. We have gone through the evidence of all the witnesses carefully. PW3 Manoj is a star witness on the point of assault. He has given all the movements of both the accused and the deceased on the date of the incident. PW1 the complainant / wife of the deceased, has stated that the accused No.2 had given his rickshaw to the deceased on hire basis. However, there was a continuous demand of money from the accused No.2 and, therefore, the deceased returned the said rickshaw within a month. Her evidence is useful on the point of motive. It is corroborated with the FIR (exhibit 24). PW3 Manoj has stated that on the day of the

² (2002) 10 SCC 236

incident, accused Nos.1 and 2 and the deceased Anil travelled together to different places and they consumed liquor throughout the day at different places. PW3 did not drink and the other person Gajanan Mule who joined them subsequently also did not drink on that day. However, till late evening, they were drinking and when they were returning near Empress Garden, accused No.2 wanted to relieve himself and, therefore, he stopped the rickshaw. Accused Nos.1 and 2 and also the deceased alighted from the rickshaw and went towards the Empress garden. Suddenly, he heard them quarreling and then, shouts of Anil. So, he and Gajanan rushed towards that side and they saw the accused Nos.1 and 2 assaulting Anil with some weapon. As they arrived, accused Nos.1 and 2 started running. The deceased fell down and was badly injured. The clinching evidence that the prosecution has tendered in this matter is the testimony of PW4. Sanjay Akolkar, was working as a security guard at Race Course, Pune camp and when he was discharging his duty at Race Course, he heard one person lying at some distance from one auto rickshaw. He heard shouts for help. He noticed one person running towards him and so he and other two persons apprehended that person and took him towards the rickshaw and that was accused No.1. He has stated that two other persons were present and there was one injured who was lifted by them in the rickshaw. He has stated that two other persons arrived on the spot and PW4 handed over the person apprehended by him

to police. In the evidence of PW9 Shivaji Kanase, he has stated that on 11.4.2011, at around 11.45pm, accused No.1 was arrested and produced by the constable PW7 Gaikwad before him and the said crime was registered at around 11pm. Thus, the evidence of Sanjay Akolkar is very important. He is an independent witness and his presence being a security guard was natural. Accused No.1 was running away from the spot. His presence near the body of the deceased itself shows his connection with the incident of assault. Evidence of PW4 corroborate evidence of PW3 in all material particulars. Accused No.2 was not arrested on the spot. However, once the evidence of PW3 is believed, then the role of the appellant/accused No.2 is proved by the prosecution. PW1 Kavita has stated about the motive of accused No.2. The deceased was not assaulted with fist blows, kicks or any stone or wooden stick which was lying nearby for there would have been a sudden quarrel between the deceased and the accused. The injuries were incised and the weapon used for the assault were choppers by both the accused. This shows that the accused had planned to kill the deceased. Though Gajanan Mule would have been a witness supporting the evidence of PW3, the evidence of PW3 itself is found credible, cogent, consistent and reliable and, therefore, non-examination of Gajanan Mule has not weakened the case of the prosecution. The CA report discloses that the blood found on the chopper was human blood and the blood group was B group. The blood

group of the deceased was B group. At the time of discovery panchanama, one chopper was found at the Empress garden on the next day. The possibility that while running away, the accused had thrown or kept the weapon in the garden cannot be ruled out. Though the panch PW5 Kunjir has acted as panch on 30 to 35 times, that itself cannot discredit the witness.

13. The Supreme Court in **Mohan Singh (supra)**, held that the motive was not proved and there were several infirmities in the inter se evidence of the witnesses and it also observed that the recreation, conduct of the witnesses have to be taken into account while appreciating the evidence. This observation is undoubtedly useful and guiding for the Court. However, this cannot be applicable to the present case considering the quality of the evidence.

14. In the case of **Tulshidas (supra)**, the articles recovered were not immediately sealed and it was observed by the Division Bench of this Court as the lac seal was not affixed to it, no evidentiary value can be attached to the said recovery. In the present case, the articles were immediately seized. It is not mandatory that the sealing should be only by lac seal but there can be a paper sealing and it should be intact at the time of trial.

15. Under such circumstances, we are of the view that this is a case where no interference is required in this case. The impugned judgment and sentence is confirmed. Appeals are dismissed.

(MRIDULA BHATKAR, J.)

(V.K. TAHILRAMANI, J.)