

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.755 OF 2009

Sakir Nanku Khan ... Applicant

Vs.

The State of Maharashtra ... Respondent

Ms.Rohini Dandekar, Advocate appointed for the Applicant
Mr.H.J. Dedia, APP, for Respondent - State

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

DATE: **AUGUST 23, 2016**

ORAL JUDGMENT (Per Smt.V.K. Tahilramani, J.):

1. The appellant Sakir Nanku Khan has preferred this Appeal against the judgment and order dated 30.8.2006 passed by the learned Second Adhoc Additional Sessions Judge, Thane, in Sessions Case No.6 of 2006. By the said judgment and order, the learned Sessions Judge convicted the appellant under section 302 of the Indian Penal Code and sentenced him to imprisonment for life and fine of Rs.2,500/-, in default R.I. for one year.

2. The prosecution case briefly stated is as under:

At the time of the incident the appellant, deceased and witnesses were residing at Kashimira. Both the appellant and the deceased Gagan Bahadur are natives of Nepal. The deceased Gagan bahadur was working

as a watchman of Shalimar building. The appellant was working in a Putha (Cardboard) Company. The incident occurred on 16.8.2005 at about 10.30 am. The incident was witnessed by PW3 Akram, PW9 Afasana and PW10 Shanaz. They witnessed the appellant assaulting deceased Bahadur with a knife on various parts of his body and thereafter running away from the spot. PW3 Akram lodged FIR (exhibit 11). Thereafter, investigation commenced. After completion of investigation, chargesheet came to be filed.

3. Charge came to be framed against the appellant under section 302 of the Indian Penal Code. The appellant pleaded not guilty to the said charge and claimed to be tried. His defence is that of total denial and false implication. After going through the evidence adduced in this case, the learned Sessions Judge convicted and sentenced the appellant as stated in para 1 above, hence this appeal.

4. We have heard the learned Counsel for the appellant and the learned APP for the State. We have carefully considered their submissions, the judgment and order passed by the learned Sessions Judge and the evidence in this case. After carefully considering the matter, for the below mentioned reasons, we are of the opinion that there is no merit in the appeal.

5. The conviction of the appellant is mainly based on the evidence of three eye witnesses i.e., PW3 Akram, PW9 Afsana and PW10 Shanaz. Akram has stated that he knew the appellant since last 10 to 15 years. Akram was working in a Putha (cardboard) company and the deceased was serving as a Watchman in some society. Akram has stated that on 16.8.2005, he heard shouts "bachao, bachao". He saw the appellant holding a knife in his hand. The appellant was assaulting Bahadur with knife on his stomach and back. Therefore, he went to rescue Bahadur. Akram caught hold of the appellant. Bahadur collapsed and fell down. Meanwhile, the appellant rescued himself from the clutches of PW3 Akram and ran away. Akram then went to the police station and lodged FIR.

6. The second eye witness is PW9 Afsana. Afsana has stated that she knew the appellant as well as the deceased. Afsana has stated that the incident occurred on 16.8.2005 at about 10.30am. At that time, she was fetching water from the tap situated in front of her house. At the same time, her neighbour Akram (PW3) also came to the tap to fetch water. At that time, she heard cries of Bahadur shouting "bachao, bachao". She saw the appellant assaulting Bahadur with a knife on his shoulder and stomach. Bahadur sustained bleeding injuries and collapsed. Meanwhile Akram tried to catch the appellant, however, the appellant managed to escape and ran away.

7. The third eye witness is PW10 Shanaz. She was residing at Kashimira. Shanaz has stated that she knew the appellant as he used to work in front of her house. The appellant was residing in her locality. She also knew the deceased as well as PW3 Akram, who was her neighbour. Shanaz has stated that on 16.8.2005 at about 10.30 am, she was present at her home. She heard shouts of Afsana (PW9). Shanaz, therefore, came out of the house. She saw the appellant assaulting the watchman Bahadur with knife. The appellant inflicted blows with knife on the stomach of Bahadur. Thereafter, the appellant escaped from the spot. Nothing has been elicited in the cross-examination of any of these three eye witnesses so as to cause us to disbelieve their evidence.

8. It is the case of the eye witnesses that the appellant assaulted the deceased with a knife on the stomach, shoulder and other parts of the body. This is supported by the medical evidence. PW6 Dr.Dhotre conducted the post-mortem on the dead body of Gagan Bahadur. On external examination, he found 5 injuries. The injuries are thus:

- i) Perforated (stab) injury over epigastric region
- ii) Incised wound on top of right shoulder. Size 7cmX3cmX7cm
- iii) Two perforated (stab) injuries over left chest wall.
- iv) Incised wound on left buttock. Size-3cmX15cmX6cm.

- v) Incised wound over small finger, right finger and middle finger of right hand.

The injuries on the right hand were bone deep. Dr.Dhotre has stated that all the injuries sustained by Bahadur might have been caused by sharp edged weapon and the injuries are possible by knife (Article C). The cause of death was haemorrhagic shock due to injury to liver and multiple injuries.

9. On going through the record, we are of the opinion that there is sufficient evidence to prove the guilt of the appellant beyond reasonable doubt. Hence, we find no merit in the appeal. Appeal is dismissed.

(MRIDULA BHATKAR, J.)

(V.K. TAHILRAMANI, J.)