

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1425 OF 2011**

Ritesh @ Karan Rashmikan Pawar	]
Aged 20 years, Occ: Service	]
Residing at Mangaldeep Society,	]
Raigad Vibhag, Near Well Parksite,	]
Vikhroli (W) Mumbai	]
(Now Nashik Central Jail, Nashik)	].. Appellant
	[Ori. Accused No.1]

Vs.

The State of Maharashtra	]
Through Parksite Police Station,	]
Dist. Mumbai	].. Respondent

....

Ms. Sarojini Upadhyay Advocate appointed for the Appellant
Mrs. A.S. Pai A.P.P. for the State

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

DATED : JULY 01, 2016

ORAL JUDGMENT: [PER SMT. V.K. TAHILRAMANI, J.]

1 This appeal is preferred by the appellant-original accused No.1 against the judgment and order dated 29.10.2010 passed by the learned Ad-hoc Additional Sessions Judge, Bombay at Sewree in Sessions Case No. 49 of 2010. By

the said judgment and order, the learned Sessions Judge convicted the appellant under Section 302 of IPC and sentenced the appellant to life imprisonment and fine of Rs. 1000/- in default R.I. for six months.

2 The prosecution case briefly stated, is as under:

(i) Deceased Mangesh was the son of PW 1 Ramdas. Devidas was the younger brother of PW 1 Ramdas. The appellant was the son of Devidas. There was some property dispute between the family of Ramdas and Devidas.

(ii) Incident occurred on 26.10.2009 at about 8.45 p.m. The incident occurred near Kailash Corporator Building. PW 2 Balasaheb was the Security Supervisor. His duty was to supervise the watchmen working in Kailash Corporator Building and Kailash Industrial Complex. At about 8.45 p.m. Balasaheb came to Kailash Corproator Building. He saw the appellant and the deceased. They were scuffling with each other. He then saw the appellant taking out a knife and assaulting Mangesh on the chest, hence, Balasaheb shouted to call people. In the meanwhile, public gathered there. The brother of Mangesh

also came to the spot. Then brother of Mangesh and some other person took Mangesh to Rajawadi hospital. There Doctor examined Mangesh and declared that he was dead. PW 1 Ramdas the father of deceased, lodged F.I.R. Thereafter investigation commenced. Dead body of Mangesh was sent for post-mortem. After completion of investigation, the charge sheet came to be filed. In due course, the case was committed to the Court of Sessions for trial.

3 Charge came to be framed against the appellant along with other accused under Sections 302 and 120-B of IPC. The appellant pleaded not guilty to the said charge and claimed to be tried. The defence of the appellant is that of total denial and false implication. After going through the evidence adduced in the present case, the learned Judge convicted and sentenced the appellant as stated in para 1 above, hence, this appeal. However, the learned Judge acquitted the appellant of the offence under Section 120-B of IPC.

4 We have heard the learned counsel appointed for the

appellant and the learned A.P.P. for the State. After giving our anxious consideration to the facts and circumstances of the case, arguments advanced by the learned counsel for the parties, the judgment delivered by the learned Judge and the evidence on record, for the below mentioned reasons, we are of the opinion that the appeal deserves to be dismissed.

5 In order to sustain the conviction, the prosecution is mainly relying on the evidence of PW 2 Balasaheb. Balasaheb has stated that he knew the appellant as well as the deceased. The appellant and the deceased were both working in the company in which Balasaheb was working as Supervisor. His duty was to supervise the watchmen working in Kailash Corporator Building and Kailash Industrial Complex. At about 8.45 p.m., Balasaheb came to Kailash Corproator Building. He saw the appellant and the deceased. They were scuffling with each other. He then saw the appellant taking out a knife and assaulting Mangesh on the chest, hence, Balasaheb shouted to call people. In the meanwhile, public gathered there. The brother of Mangesh also came to the spot. Then brother of Mangesh and some other person took Mangesh to Rajawadi

Hospital. Nothing has been elicited in the cross-examination of Balasaheb so as to cause us to disbelieve his testimony. We are of the opinion that his testimony inspires implicit confidence, hence, we have no hesitation in relying on the same. The evidence of Balasaheb not only shows that he witnessed the appellant assaulting Mangesh but his evidence also shows the motive for the appellant to assault Mangesh. Balasaheb has stated that there was property dispute between the accused and the deceased.

6 The learned counsel for the appellant submitted that if Balasaheb knew the family of the deceased, he ought to have called the family of the deceased and immediately informed them as soon as he saw the scuffle going on between the appellant and the deceased. She submitted that the fact that he did not do so, shows that he was not present at the time of the incident and he has not witnessed the incident. As far as this contention is concerned, it is seen that within a fraction of second of the scuffle taking place, the appellant assaulted Mangesh with a knife. There was hardly any time for Balasaheb to call the family of the deceased. Moreover, on

seeing the scuffle, he would not apprehend that the appellant would assault Mangesh with a knife. In any event, as soon as Balasaheb shouted for help, the brother of Mangesh came within a few minutes to the spot. In such case, there was no necessity for Balasaheb to call the family of the deceased from his cell phone and inform them about the incident.

7 The evidence of PW 2 Balasaheb is corroborated by the medical evidence. PW 4 Dr. Tadvī conducted the post-mortem on the dead body of Mangesh. On external examination, Dr. Tadvī found four scratch marks and the below mentioned injury on the dead body of Mangesh:

“ Stab wound over the center of chest left side 6 cm away from the right from the nipple / direction size of the wound 3 cm x 1.5 cm deep with sharp edge. Piercing deep into the sternum size 3 cm x 1.5 cm. Piercing pericardium anteriorly size 2.75 cm. x 1.5 cm with blood clots positive in the pericardium sac. Myocardium shows stab wound anteriorly, cut wound size 2.75 x 1.25 cm. deep into chamber with blood clots positively.”

In the opinion of Dr. Tadvī, probable cause of the death is stab wound perforating heart with internal hemorrhage in a case of assault with sharp edged weapon. Dr. Tadvī has stated that injury no.1 was sufficient to cause the death.

8 The learned counsel for the appellant submitted that Balasaheb speaks of only one assault by the appellant on Mangesh, however, the Doctor has noticed six injuries, hence, the evidence of PW 2 Balasaheb cannot be relied upon. As far as this contention is concerned, it is seen that injury nos. 2 to 5 are just scratch marks. Balasaheb has stated that the assault was on the chest and there was scuffle, hence, it is during this scuffle that these scratch marks could have been caused. As far as injury no. 6 is concerned, there was perforation of sternum. The said injury is mentioned in injury no.1 which is stab wound over the center of the chest. This stab wound also caused perforation of sternum. This injury also pierced deep into the sternum and pierced pericardium and the heart. Thus we find no merit in this contention.

9 In view of the above, we do not feel it necessary to advert to any other evidence as we are of the opinion that the evidence of PW 2 Balasaheb and PW 4 Dr. Tadvī is sufficient to sustain the conviction. In this view of the matter, we find no merit in the appeal, hence, the appeal is dismissed.

10 Office to communicate this order to the appellant through the concerned Jail Superintendent.

11 We quantify legal fees to be paid to appointed Advocate Ms. Sarojini Upadhyay by the High Court Legal Services Committee at Rs. 5000/-.

[MRS. MRIDULA BHATKAR, J.]

[SMT.V.K.TAHILRAMANI,J.]