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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.251 OF 2014.

Iqbal Abrar Saifi	]	
aged: 35 years,	]	<u>Appellant</u>
at present lodged at Kolhapur Central Jail	]	Original
residing at Saat bangla, Versova,	]	Accused
Andheri (W), Mumbai and Khanpur Daya	]	No.1
Post Bholipura,	]	
Tal. Bahedi, District: Bareilly (U.P.)	]	

V/s.

The State of Maharashtra	]	
Through Versova Police Station	]	Respondent
Bombay	]	

Ms. Rohini M. Dandekar, appointed advocate
for the Appellant.

Mr. Arfan Sait, A.P.P., for the Respondent-
State.

**CORAM : SMT. V. K. TAHILRAMANI &
DR. SHALINI PHANSALKAR-JOSHI, JJ.**

RESERVED ON : 24TH AUGUST, 2017.

PRONOUNCED ON : 07TH SEPTEMBER, 2017.

JUDGMNET : [Per: Dr. Shalini Phansalkar-Joshi, J.]

1. This appeal is preferred by the original accused No.1, who has been convicted, in Sessions Case No.767 of 2008, by the City Civil and Sessions Court, Mumbai, vide its judgment and order dated 6.8.2013, for the offence punishable under Sections 302 and 201 of Indian Penal Code and sentenced to suffer imprisonment for life and to pay fine of Rs.5,000/- in default to suffer S.I. for five months, on the first count; and to suffer imprisonment of six months and fine of Rs.1,000/- in default to suffer S.I. for one month, on the second count.

2. Brief facts of the appeal can be stated as follows :-

On the night intervening between 7th and 8th August, 2008, P.W.1 ASI Deshwal was on night patrolling duty alongwith P.W.11 Ijak Khare, in the Versova Mobile van No.2. At about 11.00 p.m., they received wireless message from the police station that at Johara Agri "K" Building, one lady was being assaulted. Hence on the receipt of this information, they immediately went to the said spot and reached there at about 11.07 p.m. On enquiry with

the persons gathered there, they came to know that some incident has happened in Flat No.14 on the third floor of the said building. Hence, they rushed to that flat. One person who was inside the flat attempted to open the door. However, as soon as he witnessed them, the said person tried to shut the door. However, P.W.1 ASI Deshwal and P.W.11 Khare forced the door open and entered in that flat. According to prosecution case, the person who was inside the said flat and who obstructed these witnesses to enter therein, was appellant herein.

3. It is further case of prosecution that these witnesses noticed the blood stained clothes on his person and a fresh injury on his face. On enquiry, appellant disclosed that since last about three months, he was married with one lady by name Rani. However, Rani started having affair with Deepak. Therefore, he got annoyed and hence on that night, when he returned to the house and found both Rani and Deepak in compromising position on the bed in the hall, he started assaulting Deepak by fist-blows. At that time, Rani inflicted blows on his head with wooden stick (Latani). Therefore, he lifted an axe which was below the bed and inflicted blow on the head of Deepak. Deepak sustained injuries

and became unconscious. Seeing it, Rani attempted to run away, but he assaulted Rani with axe on her head. While doing so, the handle of the axe became loose, hence he brought knife from the kitchen and inflicted knife blows on Rani and Deepak. According to police, Rani was found in injured and unconscious condition in bed room; whereas Deepak has already succumbed to the injuries and his dead body was lying in the gallery of the hall. His brain material had come out and therefore his dead body could not be carried to the hospital. Inquest panchnama of his dead body was made on the spot itself; whereas Rani was taken to the Hospital.

4. Meanwhile P.W.5 PSI Gujar, on receipt of this information came to the spot, after making necessary station diary entry. He made inquest panchnama of the deceased Deepak, arrested appellant on the spot vide Exh.61. His personal search was taken and in the search, some articles like gold ring of wrist size, mobile phone etc. were found, which came to be seized under panchnama. The clothes on his person viz. Pant and banian were also found to be having blood stains thereon. They were seized under panchnama. Thereafter he was brought to the police station. At the spot, P.W.7 PSI Gujar noticed pool of blood

in the gallery and in the bed room. He found huge quantity of blood spread on the wall, on the bed and on the door planks of the lavatory. Some documents pertaining to the property were also found which came to be seized under spot panchnama vide Exh.42.

5. On the same night, P.W.1 ASI Deshwal lodged complaint on behalf of the State against the appellant vide Exh.15. On his complaint C.R.No.226 of 2008 came to be recorded at Versova Police Station. During the course of further investigation, all these articles seized from the possession of the appellant and from the spot of incident were sent to the Chemical Analyzer alongwith the clothes of the deceased Rani and Deepak.

6. While in the police custody, on 09.08.2008, the appellant gave disclosing statement, showing his readiness and willingness to produce the axe and knife used in the commission of the offence. His statement was reduced to memorandum panchnama by P.W.8 PSI Shinde, in the presence of P.W.6 panch witness Mohd. Haq.

7. Thereafter the appellant guided police and panchas to the flat where the incident has occurred. From that flat he produced one knife, which was kept under the Refrigerator. The said knife was having the blood stains. Thereafter the appellant guided the police and panchas to the lavatory and from there, he produced the blade of axe which was lying in the lavatory pot. They were seized under panchnama vide Exh.44.

8. Further investigation of the case was taken over by P.W.9 PI – Tarte. In his further investigation, role of original accused No.2 Abu Bakar was transpired. He came to be arrested on 11.8.2008. The role of his sister Nasrin Shaikh came to be revealed and she was arrested on 12.8.2008.

9. P.W.9 PI Tarte, then recorded statement of the landlord an Estate Agent of the said flat; wherein the incident has occurred and it was revealed that there was some dispute relating to the property between Rani and her husband accused No.2 Abu Bakar with.

10. On 28.8.2008, appellant was produced before the

Metropolitan Magistrate, as he expressed his desire to give confessional statement and accordingly his confessional statement came to be recorded by P.W.13 Metropolitan Magistrate, Andheri - D.H. Sharma.

11. On the basis of the material collected during the course of investigation, it was transpired that original accused No.2 Abu Bakar wanted to eliminate Rani on account of property dispute between them and hence alongwith his sister accused No.3 Nasrin, he hatched conspiracy to kill Rani. As Deepak was found with Rani, he was also eliminated. In view thereof, P.W.9 PI Tarte filed chargesheet against all the three of them, for the offences punishable under Sections 120(B), 449, 302 and 201 of the Indian Penal Code.

12. In due course, case was committed to the Sessions Court, Mumbai. Accused No.3 Nasrin came to be discharged on her application. Her discharge was upheld by this Court in Revision Application No.393 of 2009, by order dated 7th May, 2012.

13. As a result charge came to be framed against present appellant and accused No.2 Abu Bakar vide Exh.36. Both of them pleaded not guilty and claimed trial, raising the defence of denial and false implication.

14. In support of its case, prosecution examined in all 13 witnesses. To prove his innocence, appellant also entered witness box and gave evidence on oath.

15. On appreciation of this entire evidence, learned trial Court was pleased to acquit the accused No.2 Abu Bakar holding that there was no sufficient evidence on record to implicate him. However, the learned trial Court was pleased to convict the appellant, for the offences punishable under Sections 302 and 201 of Indian Penal Code and acquitting him of the charge of Criminal Conspiracy under Section 120(B) of Indian Penal Code.

16. In this appeal, we have heard at length learned counsel for the appellant and the learned APP. We have also perused the evidence on record and impugned judgment of the trial Court.

17. According to learned counsel for appellant, the entire case of prosecution is based on the circumstantial evidence. However, the circumstances alleged against the appellant are neither incriminating nor fully established, nor they are forming a chain so complete as to lead to no other inference but that of the guilt of the appellant alone. It is submitted that the evidence adduced by prosecution does not prove that the appellant has any motive, enmity or intention to kill deceased Rani or Deepak. Appellant was totally a stranger, who had come to Mumbai just few days before the incident. His evidence proves that he was working as barber in the beauty parlour of Rani and was sleeping on the platform outside beauty parlour of Rani. On the date of incident, on the receipt of a phone call that Rani had called him, he has rushed there and got himself entangled. It is urged that the evidence on record proves that there was dispute relating to the property between Rani and her husband original accused No.2 Abu Bakar. Rani has apprehension of danger to her life from accused No.2. Merely because appellant was found on the spot as he was called there, he is falsely implicated in the offence. It is urged that no-one has seen appellant going to Rani's flat with axe

or knife in his hand. He has given sufficient explanation for his presence on the spot, by entering into witness box. However, the trial Court has committed error in not accepting the same. Hence according to learned counsel for appellant, this is a fit case where the benefit of doubt needs to be extended to the appellant.

18. Per contra, learned APP has strongly supported the impugned judgment by submitting that there is strong incriminating circumstance of appellant being found on the spot immediately after the incident and he was caught red handed with blood stained clothes on his person and fresh injury on his forehead. Moreover, at his instance the weapons of assault viz. knife and axe were seized. According to learned APP, the memorandum and seizure of panchnama to that effect is proved through the evidence of Panch witness and Investigation Officer. It is otherwise also admitted in the evidence. Moreover, there is no cross examination of P.W.1 Deshwal and P.W.11 Khare as to the immediate confession statement made by appellant before them and on the basis of which F.I.R. was registered wherein it is categorically stated that appellant has admitted that he has assaulted Rani and Deepak with axe and knife. Thus, according

to learned APP, the evidence on record is more than sufficient to prove the guilt of appellant beyond reasonable doubt and hence appeal needs to be dismissed.

19. This case is admittedly based on the circumstantial evidence and totally four incriminating circumstances are alleged by prosecution against appellant. The first circumstance is of appellant being caught red handed with blood stained clothes on his person at the spot. To prove this circumstance, prosecution is relying on the evidence of P.W.1 Deshwal who was attached to Versova Police Station and was on patrolling duty on that night. He was accompanied by P.W.11 Khare. According to their evidence, on that night at about 11.00 p.m., on the receipt of wireless message, they rushed to the spot of incident, which was at flat No.14 on the third floor of Johar-Agari "K" Building. There they saw that appellant was attempting to open the door, but as soon as he saw these witnesses, he tried to shut the door. They pushed the door and entered into the said flat. Appellant started scuffling with them. Hence, they caught hold of him and tied him. They noticed blood stains on the clothes on his person and injury on his face. On enquiry with appellant, he confessed to have

assaulted the two persons in the said flat, namely Rani and Deepak. According to him, he was married with Rani. However, Rani started having affair with Deepak. He got annoyed against them. On that night when he came to the flat, he noticed Rani and Deepak in compromising position on the bed in the hall. So he started hitting Deepak by fist-blows, at that time Rani inflicted blow of wooden stick on him, so he got annoyed and lifted knife which was below the bed and inflicted the blows on Deepak. But thereafter, as Rani started to run away, appellant assaulted axe on her head, she fell down. While removing the axe, blade of the axe became loose, so he brought knife and again assaulted Rani. As per evidence of P.W.1 ASI Deshwal and P.W.11 Khare, appellant was caught red handed and was taken to the police station. On the same night, P.W.1 ASI Deshwal lodged complaint against appellant vide Exh.43. There is also evidence of P.W.3 Sayyed Aslam in whose presence appellant confessed having assaulted Rani and Deepak.

20. It is true that as regards this confessional statement of the appellant made before these three witnesses, it cannot be admitted in evidence, it being made before police and hence the

trial Court has also rightly discarded the same. Their evidence, however, goes to prove the presence of the appellant at the spot of incident where; the dead bodies of Deepak and injured Rani were found.

21. As held by the Apex Court in case of **A. N. Venkatesh and anr -vs- State of Karnataka, (2005) 7 SCC 714**, relied upon by the learned APP, presence of the appellant at the spot of incident, that too with blood stained clothes, is relevant and admissible in evidence irrespective of the fact whether the statement made by him contemporaneously to these witnesses cannot be admissible.

22. The F.I.R. lodged immediately after the incident by P.W.1 ASI Deshwal on the same night contains all the details, thereby giving sufficient corroboration, about presence and arrest of appellant from the spot in blood stained clothes with fresh injury on his forehead. There is also evidence of P.W.3 Sayyed Jamiluddin, who was Estate Agent, was informed about the said incident on phone and has rushed to the spot and found the appellant being caught hold by P.W.1 ASI Deshwal .

23. As a matter of fact, appellant is also not disputing that when P.W.1 ASI Deshwal and P.W.11 Khare came to the spot, he was very much present in the flat. He is also not disputing that at that time, there were blood stains on his clothes with injury on his face and he was taken to the police station immediately where the complaint was lodged against him. Thus, as regards this circumstance about presence of appellant with blood stained clothes on the spot of incident and he being caught red handed there, has been sufficiently proved on record.

24. The second circumstance is of recovery of weapons of assault, at the instance of appellant. On this aspect, there is evidence of P.W.6 panch witness Mod. Haq, P.W. 8 Crime Detection Officer – PSI Shinde and P.W.9 PI Tarte, that during police custody on the next day, appellant gave disclosing statement that he will produce the weapons of assault; his statement reduced to memorandum panchnama vide Exh.44. Thereafter the appellant guided the police and panchas to the spot of incident. From there he produced the knife which was kept below the fridge in the flat. He further produced the blade of the axe which was in the lavatory pot. Both these article Nos. 1 and 2

were seized under panchnama. According to evidence of these witnesses, both these articles were having blood stains thereat. Nothing worthwhile is elicited in their cross examination to disbelieve their evidence in any way.

25. The only contention raised is that at the time of spot panchnama why these weapons were not found? However, the evidence on record proves that these weapons were kept in a concealed place. The knife was kept below the fridge and blade of the axe was kept in the lavatory pot. It goes without saying that the place at which these weapons were concealed, was in the exclusive knowledge of the appellant. Hence, at the time of spot panchnama, they might not have been found by the police.

26. The evidence on record also proves that the clothes of the appellant were seized under panchnama at the time of his arrest vide Exh.61. At that time blood stains were noticed on the right portion of his pant and rightside of the banian. This fact is proved through the evidence of P.W.8 Crime Detection Officer PSI Shinde and panchas. These clothes were sent to Chemical Analyzer and as per Chemical Analyzer's Report, blood stains

having blood group of "A" which was of the deceased Deepak, were found on these clothes.

27. All these three circumstances, in our considered opinion, are of a clinching nature and no plausible explanation is offered by the appellant to explain these circumstances. No doubt appellant has examined himself and deposed that on that night while he was closing the shop, one call was received on the landline telephone, informing him that Rani has called him immediately to her residence. Hence he went there. The door was open from inside and somebody from inside hit him with hard blunt object on his forehead, near right eyebrow. He was pushed inside the flat and door was locked from outside. After a minute he was able to see Deepak and Rani lying in a pool of blood. After some time, police came and he narrated the incident to them.

28. However, in our view, there are inherent infirmities in his explanation. According to him, the door was locked from outside, however, the evidence of P.W.1 Deshwal and P.W.11 Khare does not support this fact because according to them, the door was open and after seeing them, appellant tried to close that

door, they, however, pushed it opened and went inside. Further, if the appellant found that Deepak and Rani were lying in injured condition in a pool of blood, there is no explanation as to why he did not try to raise shouts and/or to inform the police or persons nearby. Why he remained at the spot despite the door being not closed from outside? Moreover, as observed by the trial Court, appellant has not given consistent explanation about the injury on his forehead. In his statement, recorded under Section 313 of the Code of Criminal Procedure, he has stated that it was an old injury; whereas in his evidence, he has stated that someone from inside assaulted him and therefore, he sustained the injury.

29. Surprisingly, the appellant has also not offered any explanation about the gold ring of wrist size which was found in his possession, when the police opened the door and arrested him.

30. Thus, there are total four circumstances which clearly go to connect the appellant with the alleged offence. First, appellant caught red handed on the spot of incident with blood stained clothes; the second, blood stained clothes were of the

blood group of the deceased Deepak; the third, recovery of weapons of assault i.e. knife and and axe at the instance of appellant from the place which was exclusively within his knowledge; and the fourth, the recovery of gold ring like bangle, belonging to Rani from his possession at the time of arrest from the spot.

31. In our considered opinion, all these four incriminating circumstances are of more than clinching nature, leaving no manner of doubt about the guilt of the appellant. The conviction of the appellant, therefore, as recorded by the trial Court does not call for any interference. The appeal is, therefore, without merits and hence stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.] [SMT. V.K.TAHILRAMANI, J.]