

VPH

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 286 OF 2015
(Through Jail)

Shamal Shankar Datta,)
Age 32 years, R/o. Zopadpatti
in front of Shraddha Bar &)
Restaurant, Nirmalgar, Khar)
(East), Mumbai)... Appellant

Vs.

The State of Maharashtra)
(at the instance of Police)
Station, CR. No.180/2012 ... Respondent

Mr. Abhaykumar Apte, advocate appointed for the Appellant.

Mrs. G. P. Mulekar, APP for the Respondent – State.

CORAM : Smt. V. K. TAHILRAMANI, J.
 ACTING CHIEF JUSTICE, &
 P. N. DESHMUKH, J.
 (SPECIAL VACATION BENCH)

DATE : MAY 10, 2018

JUDGMENT [PER : P. N. DESHMUKH, J.]

1. This appeal takes exception to judgment of learned

Additional Sessions Judge, City Civil Court, Greater Mumbai, passed in Sessions Case No. 670 of 2012 dated 7th November, 2011, by which Appellant came to be convicted for the offence punishable under Section 302 of the Indian Penal Code and sentenced to suffer imprisonment for life and pay fine of Rs. 5,000/-, in default to suffer SI for a period of one month, and under Section 324 of IPC is sentenced to suffer SI for one year and to pay fine Rs. 1,000/- in default to suffer SI for a period of 15 days., under Section 506(II) of IPC Appellant is sentenced to suffer RI for one year with fine of Rs. 1,000/- in default to suffer SI for 15 days. All above sentences are directed to run concurrently.

2. In brief case of prosecution is that:

(i) Deceased Divakar Manna was working as male cook in hotel situated at Khar (West), Mumbai, while Appellant was working in the same hotel for carrying out work of washing utensils. On 15.6.2012 quarrel took place between deceased Divakar and Appellant of which complaint was lodged by

deceased with PW 3 Yogesh Chavan, Manager of the hotel, informing to him that Appellant had abused him and he should be removed from the work. The quarrel was pacified by PW 3 Yogesh.

(ii) In this background, in the night at 00.30 hours when deceased left the hotel for going home with PW 1 Sushant Sarkar, who is acquainted with deceased, and was also working in nearby restaurant and while they were proceeding together alongwith PW 2 Raju Mandal by walk towards Khar Railway Station, deceased informed them about the quarrel with Appellant, which had taken place at the day time. When they were proceeding near from near M. G. Jewellers, Appellant came from behind and gave call to deceased and immediately committed assault by knife on his chest. When PW 2 Raju tried to intervene to separate them, he sustained blow of knife on the right side of his waist and thus, ran away from the spot. PW 1 Sushant raised shouts, due to which Appellant ran away from the spot. On hearing shouts, PW 5 Ratnakar Gavas, who was on

patrolling duty on police van arrived on the spot and found one person lying on the road in the pool of blood. He with the assistance of PW 1 Sushant shifted deceased initially to Bhabha Hospital where he was examined by PW 6 Dr. Archana at 2.00 a.m. and was declared as dead. She had noted that deceased has sustained as many as 17 injuries on his person and thus, sent dead body for post mortem to Cooper Hospital where autopsy was performed by PW 7 Dr. Sanjay Gude.

(iii) It is case of the prosecution that on the basis of report of PW 1 Sushant Sarkar (exhibit 12), police registered offence vide C.R. No. 180/2012 for the offence punishable under Section 302 of IPC and was investigated by PW 11 PSI Sudhir Jadhav, during the course of which he visited hospital and drew inquest panchanama and seized clothes from the person of deceased under panchanama (exhibit 39). I.O. then visited spot, situated in front of M. G. Jewellers and drew spot panchanama (exhibit 44). On 16.6.2012 accused is arrested at 7.00 p.m. and his pant and shirt came to be seized under

panchanama (exhibit 33). During interrogation, Appellant voluntarily made statement which is recorded (exhibit 34) to discover knife and in pursuance to his memorandum statement, one knife came to be seized under panchanama (exhibit 35) at the instance of Appellant. On recording statement of witnesses and forwarding muddemal articles to C.A., charge-sheet came to be filed before the learned Additional Chief Metropolitan Magistrate, Bandra, Mumbai. In the course of time, charge-sheet came to be committed to the Sessions Court. Charge is framed against Appellant for the offences punishable under Section 302, 307 and 506(II) of IPC, to which he pleaded not guilty and claimed to be tried. His defence is of total denial. Appellant has not led any defence evidence.

3. To establish charge against Appellant, prosecution in all examined 12 witnesses and commenced evidence by examining PW 1 Sushant eye witness; PW 2 Raju Mandal, injured eye witness; PW 3 Yogesh Chavan, Hotel Manager; PW 4 Head Constable Nana Sartape, muddemal carrier to Kalina;

PW 5 Ratnakar Gavas, officer on duty on Khar Wireless mobile van; PW 6 Dr. (Mrs.) Archana Mothe; PW 7 Dr. Sanjay Gude, who has performed post mortem and produced P. M. notes (exhibit 28), and examination reports of Forensic Science Laboratory (exhibit 29 and exhibit 30); PW 8 Imran Khan, panch witness in whose presence arrest of Appellant was effected and his clothes are seized; PW 9 Suman Malakara on seizure panchanama of clothes of deceased; PW 10 Rakesh Gupta on inquest panchanama; and concluded evidence by examining PW 11 PSI Sudhir Jadhav, and PW 12 API Dilip Kale, Investigating Officers.

4. Learned trial Judge on considering evidence on record convicted Appellant as aforesaid, hence this appeal.

5. Heard learned advocate Mr. Abhaykumar Apte, appointed for Appellant and Learned APP Mrs. G. P. Mulekar for Respondent State. It is submitted on behalf of Appellant that evidence of PW 1 Sushant and PW 2 Raju, eye witnesses is not

reliable as interested witnesses, knowing deceased much prior to incident and thus, have falsely implicated Appellant as prior to incident, relations between deceased and Appellants were strained due to some dispute while working in the hotel. It is therefore, contended that their evidence is required to be kept out of consideration. It is further submitted that if evidence of eye witnesses is disbelieved, there is no evidence establishing Appellant's involvement, and thus, prayed that appeal be allowed.

6. On the other hand, learned APP supported impugned judgment by referring the material evidence, and contended that when the entire evidence is considered collectively in its true spirit, the only conclusion which can be drawn against Appellant is of guilt in commission of present crime, as from the evidence on record prosecution had established all the circumstances which are conclusive in nature to connect the accused with present crime and thus, contended that appeal be dismissed.

7. In view of case of prosecution as aforesaid, we have scrutinised evidence of PW 1 Sushant Sarkar, complainant, PW 2 Raju, injured eye witness; PW 3 Yogesh who is examined on circumstance alongwith medical evidence, and found from evidence of PW 1 Sushant Sarkar that in the night at about 00.30 hours of incident when deceased was proceeding after attending his work in a hotel at Bandra towards Bandra Railway Station, accompanied the deceased as was working in one of the restaurants situated near to the restaurant where deceased was working, and was thus, knowing deceased since 6-7 years prior to the incident. When they were proceeding PW 2 Raju, who was also working in the hotel with deceased joined them and they were proceeding by walk when deceased informed them of the quarrel which took place between him and Appellant during the day in the hotel. When they reached near M. G. Jewellers shop, Appellant came from behind and gave call to deceased and immediately committed assault by knife on his chest. On PW 1 Sushant's raising shouts and intervening the assault, he was also

subjected to assault, and due to shouts, Appellant ran away from the spot. On hearing shouts, police patrolling van arrived at the spot and immediately shifted deceased to Bhabha hospital.

8. Evidence of PW 1 Sushant is fully corroborated by evidence of PW 2 Raju, who is eye witness to the incident and has also sustained injury when he has deposed that on the day of incident after finishing his work in the hotel, when he alongwith deceased and PW 1 Sushant were proceeding by walk towards Bandra Railway Station, Appellant came from behind and inflicted knife blows on the chest of deceased. He stated that when he intervened, Appellant inflicted knife blows on his person, due to which he sustained injury on the right leg near the waist. He has stated that Appellant sat on the person of deceased and inflicted blows by means of knife.

9. Prior to deposing of incident, he has also stated of quarrel which had taken place in the day time around 3.00 p.m. in the hotel between Appellant and deceased, of which

complaint was made by deceased to PW 3 Yogesh Chavan.

10. In the cross-examination of both these eye witnesses, nothing has come on record to doubt their version. In fact, their evidence goes to establish that at the time of incident, Appellant committed assault by knife repeatedly on the person of deceased, which has resulted into his death.

11. Evidence of PW 3 Yogesh Chavan corroborates above evidence when he has deposed about deceased complaining against Appellant on that day in the hotel, saying that Appellant was not obeying him, and therefore, he may be removed from the service. He has stated that in the night after 1.45 a. m. he received phone call from his assistant one Ganesh that when he contacted Divakar at 00.30 hours, there was no response from Divakar and at the same time, he received a call from police, informing of the incident and instructing Yogesh to visit Bhabha Hospital. Evidence of PW 3 Yogesh also does not appear to be shattered in the cross-examination in any manner. He has denied

that no such complaint against Appellant was made by deceased on 15.6.2012.

12. Abovestated evidence and in particular of PW 1 Sushant and PW 2 Ram on the point of assault by knife by Appellant is further found corroborated by the evidence of PW 6 Dr. Archana Mothe, Medical Officer of Bhabha Hospital, Bandra, when she has stated that in the night on 16.6.2012 at 1.40 a.m. deceased was brought in the hospital by police, who was found to have sustained as many as 17 incised wounds and was dead, and therefore, she sent body to Cooper Hospital for post mortem. She has placed on record relevant entry No. 9143 from the concerned MLC register (exhibit 24).

13. Her evidence further establish case of prosecution of assault on PW 2 Raju in the same incident, when she has stated that in the morning at 7.30 a.m. PW 2 Raju visited hospital alongwith PW 3 Yogesh, Manager of the hotel, who gave history of assault by knife in the night and was having injury on the

right side buttock of which entry is made in MLC register as entry No. 9151. She has produced copy of extract of register of said entry (exhibit 25). Evidence of PW 6 Dr. Archana thus, further corroborates evidence of above referred eye witnesses.

14. In the background of above evidence, evidence of PW 7 Dr. Sanjay Gude, is material, who has performed post mortem and deposed that deceased was found to have sustained as many as 17 external injuries in the form of incised stab wound, and has certified that combined effect of all the injuries, is death of deceased, which are said to be possible by knife. Nothing material has come in the cross-examination of said witness to doubt his version.

15. In the background of evidence as aforesaid, involvement of Appellant is found further established from the evidence of PW 8 Imran Khan, panch witness, who has stated that on 16.6.2012 clothes being T-shirt and black pant, which were on the person of Appellant having blood stains were seized

in his presence under panchanama (exhibit 33) and further deposed that on 17.6.2012 Appellant voluntarily made statement to police to discover knife, which was recorded as per (exhibit 34) and in pursuance to same, had produced one knife, concealed by him by on the roof of one shop styled as “X-Zone shop” at Bandra, which came to be seized under panchanama (exhibit 35).

16. When all the above stated evidence is considered collectively, evidence of PW 1 Sushant, complainant, PW 2 Raju as well as PW 3 Yogesh establish that on 15.6.2012 during the day time when deceased was working in a hotel where Appellant was working as helper, there was quarrel between them, of which complaint was made by deceased to PW 3 Yogesh, Manager. It is further established that in the night after 00.30 hours, when deceased was proceeding by walk alongwith PW 1 Sushant, complainant and PW 2 Raju towards Bandra Railway Station, near M. G. Jewellers shop, Appellant came from behind and gave call to deceased and committed assault by

knife, causing his death.

17. From the above evidence, prosecution is thus, found to have established charges levelled against Appellant beyond reasonable doubt. We therefore, find that prosecution has established the case against Appellant, for which he is charged. We therefore, find no merit in the appeal and the same is dismissed.

Sd/-

[P. N. DESHMUKH, J.]

Vinayak Halemath

Sd/-

[ACTING CHIEF JUSTICE]