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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.135 OF 2010

Rabi Bholanath Bhumji,
Age: 40 years, Occ. Labour,
R/o. Simplex Infrastructure Ltd.
Room No.51, Wadala TT,
Wadala (E), Mumbai – 400 037. ..Appellant.

V/s.

The State of Maharashtra ..Respondent.

Mr.Nitesh S.Nevshe, appointed advocate for the appellant.

Mrs.P.P.Shinde, APP for the respondent-State.

***CORAM : SMT. SADHANA S. JADHAV AND
NITIN W.SAMBRE, JJ.***

DATE : JANUARY 6, 2018

ORAL JUDGMENT (PER NITIN W.SAMBRE, J.)

The appellant-accused is convicted and sentenced to undergo life imprisonment for an offence punishable under Section 302 of the Indian Penal Code in exercise of the powers

under section 235 of the Code of Criminal Procedure. As such this appeal against conviction.

2. The prosecution case in brief is as under :-

PW2 Shastra Prasad S/o. Bachhan Prasad Kusuwaha, permanent resident Bihar, in the month of February, 2009 was working as a labourer in Symplex Infrastructure Limited, Wadala (East), Mumbai.

3. Deceased Sukhdev was also working along with the said witness Shastra Prasad-PW2 and the appellant-accused Rabi.

4. On February 27, 2009 at about 12.45 p.m., when he was standing near his room which was situated on the company's site, he saw Sukhdev fetching water from the water-tank. The appellant-accused armed with iron pipe went near the water-tank and gave two blows on the head and neck resulting in Sukhdev falling down and becoming unconscious. PW2 noticed that the appellant-accused once again gave blow of iron pipe on the head of Sukhdev.

5. Having witnessed the incident, he tried to catch hold of

the appellant-accused with the help of another worker Harindar Saha. He removed the appellant-accused to the company's office. In the said scuffle, the said witness also suffered bleeding injuries on his head. Injured Sukhdev was shifted to the hospital and thereafter referred to Sion hospital for further treatment. The said witness is the complainant in present case.

6. After the Applicant/Accused was chargesheeted for the aforesaid offence, the learned court below convicted the Applicant resulting into the present Appeal against conviction.

7. Heard learned Counsel for respective parties.

8. The learned Counsel who was appointed by this Court has tried to impress upon us to workout a case for acquittal of Accused based on the submissions that the evidence was not properly appreciated and the injuries suffered by the Appellant/Accused was not explained. Whereas the learned APP supported the case of the prosecution as sought dismissal.

9. Considered rival submissions.

10. PW1 Dr. Rajesh Chandrakant Dere is examined at Exhibit-8. He has deposed that body of deceased Sukhdev was received by him on February 28, 2009 and upon examination noted following external injuries :-

- i) C.L.W. of size 2 cm. X 2 cm., bone deep over left supraorbital region;
- ii) Contusion (Dark coloured) over both eyes (right and left);
- iii) C.L.W. of size 10 cm. X 4 cm. with brain pouting out from parietal (left) and frontal fragments comminated fracture;
- iv) C.L.W. of size 2 cm. x ½ cm. x ½ cm just 2 cm. below above injury;

According to him, all these injuries are fresh and ante-mortem.

11. He has then deposed that during post-mortem, he has noticed following injuries also.

- v) Scalp – Haematoma over parietal frontal and orbital area;

- vi) Communated fracture in frontal and parietal bone;
- vii) Contused left parietal bone.

12. According to him, the internal injuries referred above corresponds to the external injury Nos. i to iii reproduced supra. According to him, injuries referred supra were sufficient in the ordinary course of nature to cause death. By admitting his signature on Exhibit-9 post-mortem report, he has proved the said report, and also cause of death of Sukhdev as “*haemorrhagic shock following cardio cerebral injury by hard and blunt object*”.

13. He has further deposed that the injuries cited supra can be caused by use of weapon, namely, iron pipe / rod. He has added that the weapon which was shown to him to have been used in the crime in question, is sufficient to cause injuries which may result in death.

14. The said witness was not subjected to cross-examination at the behest of the appellant-accused. From the evidence of this witness, cause of death of deceased Sukhdev was proved from the post-mortem report.

15. PW3 Dr.Kuldeep Prakash Gaikwad is examined at Exhibit-20, wherein he has deposed that while he was working as Medical Officer at Sion Hospital, he was on night duty on March 22, 2009, According to him, Chandraprakash Oswal was brought to the hospital and upon examination, he noticed contused lacerated wound over right fronto-parietal region of 2 cm and it was superficial in nature. According to him, Exhibit-21, injury certificate bears his signature and opined that the injury can be caused by hard and blunt object. He has deposed that the nature of injuries can be caused by weapon at Article-A. In cross-examination, though he was unable to produce the original register so as to demonstrate the proof of certificate at Exhibit-21, however suggestion given to him that a false certificate Exhibit-21 was issued by him was turned down.

16. PW2 Shastra Prasad is examined at Exhibit-13. He claims to be working in the company in February, 2009 along with deceased Sukhdev and appellant-accused. According to him, on February 27, 2009 at about 12.45 p.m. when he was standing near his room, he saw deceased Sukhdev drawing water from the tap.

He noticed that the appellant-accused armed with pipe and gave blow on the backside of the head and neck. As a consequence, deceased Sukhdev fell down. He then noticed that accused gave another blow of iron pipe on the head of Sukhdev. He immediately rushed to the appellant-accused. Appellant-accused also gave a blow of iron pipe on his head. According to him, along with him, one Harindar Saha caught hold of the accused. He narrated about bleeding injuries suffered by Sukhdev and also by him. He stated that along with Sukhdev he was shifted to Sion Hospital for treatment. He has proved complaint Exhibit-14, as has identified his thumb impression thereon. He has also identified the weapon iron pipe Article-A.

17. In his cross-examination, fact about blow on the neck of deceased Sukhdev and second blow on the head given by the accused was tried to be disproved through omissions. However, the prosecution story as narrated by the ocular witness was not at all demolished. From the evidence of this witness, it is easily established that by use of Article-A weapon i.e. iron pipe, the appellant assaulted deceased Sukhdev and this witness.

18. PW7 Madhumoti, Supervisor of Simplex Infrastructure Limited where deceased and accused were working, is examined at Exhibit-33. In his examination-in-chief, he has identified the accused whereas he has also disclosed about the complainant Shastraprasad as employee of the said company. According to him, on February 26, 2009, accused had misbehaved as such, appellant-accused was summoned on February 27, 2009 in the Company office and was asked to leave the job. According to him, accused and PW2 were present on the spot of incident. In his cross-examination, his testimony appears to be hearsay .

19. PW4 Murlidhar Navale, police sub-inspector attached to Wadala police station is examined at Exhibit-22, whereas PW5 Ravindra, A.P.I. is examined at Exhibit-24. PW6 Ramchandra, A.S.I. is examined at Exhibit-30.

20. In the testimony of PW4 PSI Murlidhar Navale claims to be on duty as Station House Officer on the day of the incident. He then disclosed that he received information that the appellant had assaulted deceased Sukhdev. This information was received from Sion Hospital. According to him, based on telephonic

message given by constable attached to Sion Hospital, a station diary entry was made, and he along with PW5 API Ravindra went to Sion Hospital. He then deposed that deceased was in unconscious condition as informed by the treating doctor. He then visited the company premises where PW2 was present who narrated the incident. His statement was recorded after bringing him to the police station. He has stated that initially offences punishable under sections 307 and 324 of the Indian Penal Code was registered. According to him, after administering first-aid to the complainant, along with PW2, he went to the spot of incident along with panchas. He proved seizure memo of weapon i.e. iron pipe, spot panchanama Exhibit-10. He then identified the seized weapon Article-A. He then sent PW2 to Sion Hospital for treatment. According to him, the blood stained clothes of deceased Sukhdev were seized vide seizure panchanama Exhibit-11 which contained various articles from B to F i.e. clothes of deceased Sukhdev.

21. In his examination-in-chief, it is brought on record that accused was apprehended on the spot after he assaulted the deceased. As a consequence of resistance during assault shown by

accused, he suffered injuries resulting into his reference to the Sion Hospital. According to him, further investigation in the matter was carried out by PW5 API Ravindra.

22. So far as cross-examination of this witness is concerned, according to him, on the date of incident after the arrest panchanama Exhibit-23 was drawn, accused was admitted to the hospital on the next day.

23. So far as the testimony of Investigating Officer Ravindra at Exhibit-24 is concerned, it is stated that he has added offence of murder punishable under section 302 of the Indian Penal Code after having noticed death of Sukhdev. According to him, he took the injury certificate of the accused. He also identified reports of the Chemical Analyser at Exhibits-25 and 26 along with the requisition letter issued under the signature of Police Inspector which is at Exhibit-27. In the cross-examination of this witness, it is brought on record that on the previous date i.e. on August 26, 2009 deceased and appellant had enjoyed a party in which quarrel took place between the applicant-accused and the deceased. He has also brought on record the attendance

register of the company so as to prove that on the date of incident, accused was not on duty.

24. This witness was again recalled for cross-examination. During cross-examination defence has failed to extract anything from the said witness in support of case of appellant-accused.

25. PW6 Ramchandra, who was working as Store-keeper in the Wadala police station is examined at Exhibit-30. He has proved the sending of the seized clothes to Chemical Analyser vide Exhibit-27. He has also proved that the blood sample of deceased was sent to the Chemical Analyser vide Exhibit-32.

26. PW8 Suhas Yadav, P.S.I. attached to Wadala police station in his evidence has proved the inquest panchanama at Exhibit-35.

27. Statement of accused was recorded at Exhibit-38 under section 313 of the Code of Criminal Procedure wherein his defence is of false implication or that of ignorance of incident / offence.

28. From the evidence of PW2, PW4, PW5 and PW6, it is

amply proved that the appellant-accused has committed the crime in question by use of weapon i.e. Article-A. PW2 is an ocular witness who tried to save the deceased from the clutches of appellant/accused in which he has also suffered injury. It is also brought on record that the appellant gave repeated blows. On the earlier date i.e. on February 26, 2009 appellant and deceased had quarrelled. The appellant-accused in revengeful manner assaulted deceased Sukhdev and PW2 Shastraprasad. The spot panchanama, seizure panchanama of weapon, arrest panchanama of accused speaks of *prima facie* involvement of accused in the crime. Report of the Chemical Analyser speaks of blood stains. It is also noted that PW2, an eye witness in categorical terms narrates about the role of appellant/accused in the crime that too of giving repeated blows. His testimony as an eye witness is not demolished. His testimony gets corroboration with that of testimony of doctors who are examined as PW1 and PW3.

29. PW4 and PW5 in their evidence have proved the investigation. Evidence collected during investigating speaks of involvement of the appellant-accused in the crime.

30. In the backdrop of the evidence that is brought on record by the prosecution and the fact that omissions which are brought on record by the defence are of hardly any intensity to damage the prosecution story, it is to be observed that the prosecution has proved the case of involvement of the accused in committing murder of deceased Sukhdev beyond reasonable doubt.

31. Evidence of PW2 is further corroborated with that of evidence of PW7 Madhumoti to the incident of presence of accused on the spot.

32. Re-appreciation of the entire evidence depicts that PW2 Shastra Prasad is an eye-witness to the incident and the learned trial Judge has correctly treated him as an ocular witness who was injured in the incident in question. He has in clear terms implicated the appellant-accused in the commission of the crime in question with specific narration of the entire incident, including that of minute details about the place of occurrence, weapon used, etc. PW1 Dr.Rajesh has proved the post mortem report of the external injuries and cause of death by hard and blunt object.

PW7 Madhu Moti speaks about the incident of earlier night, the stauts of the appellant-accused and the deceased, as both were working in Simplex Infrasture Limited and narration by Umesh Tiwari about the misbehaviour the appellant-accused on the earlier night. The evidence of this witness also categorically establishes the presence of the complainant PW2 Shastra Prasad and deceased Sukhdev along with the appellant-accused on the spot. PW4 in his evidence has proved the drawing of samples from the spot of soil mixed with blood and seizure of clothes of deceased Sukhdev. It is also proved by PW6 Ramchandra of forwarding the seized articles to the Chemical Analyser. Article-A iron pipe has been duly identified by PW2 Shastra Prasad, the ocular witness which further concurs with the evidence of PW1 Dr.Rajesh as a weapon sufficient to cause death of the deceased.

33. It is also important to note that Article-A iron pipe which was used as a weapon and was recovered from the spot of incident was found to be stained with human blood as is apparent from the report of the Chemical Analyser.

34. It has come on record that the appellant-accused

underwent treatment in the hospital for the injuries suffered by him, as such it does not appear that the prosecution tried to suppress the same. However, narration of the incident by PW2 Shastra Prasad coupled with evidence of PW7 Madhu Moti speaks of scuffle. The involvement of PW2 and one another person in trying to save the deceased Sukhdev can be inferred from their evidence. That the incident had occurred near the water-tank and in an eventuality narrated hereinabove, the appellant-accused suffering an injury cannot be ruled out when it has come in the evidence of PW2 Shastra Prasad that the appellant-accused had resisted attempts on the part of PW2 Shastra Prasad and other workers of trying to save the deceased from the appellant-accused. One more reason so as to overlook the said submission of accused is, the appellant-accused sustaining injuries on the earlier night of the incident cannot be ruled out. It has come in evidence that the appellant-accused along with deceased Sukhdev and other workers consumed liquor and quarrelled. Even in such an incident the appellant-accused sustaining injuries cannot be ruled out.

35. In the aforesaid background, the view expressed by the learned trial Judge holding the appellant-accused guilty of the

offence punishable under section 302 of the Indian Penal Code is a possible view. In our view, no interference is warranted at this stage. The appeal lacks merits and is dismissed.

(NITIN W.SAMBRE, J.)

(SMT.SANDHANA S. JADHAV, J.)

Srikrishna
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