

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

APPEAL NO. 1344 OF 2008

1. Mangesh Sambhaji Pawar
Age 26 years, Occ: Business
res. At 38/1, Parvati Darshan,
Pune.
2. Ravindra Machindra Chudhari,
Age 22 years, Occ: Education
R/at. Indrakut Nagari,
Flat No.26, Kothrud,
Pune 26.
3. Sachin Prakash Sonawane
Age 26 yrs, Occ: Rickshaw driver,
res. At Ghorpadi peth, Pune
all serving sentenc at Yerwada
Central Prison Pune.

..Appellants

v/s.

The State of Maharashtra
through Govt. Public Prosecutor Office

..Respondents

Mr. Priyal Sarda for the Appellant No.1.
Mrs.J.S.Lohakare APP for the Respondent/State.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : JANUARY 15, 2018.**

ORAL JUDGMENT.

1. The appellants, who shall be hereinafter referred to as the

accused, have challenge the judgment dated 29.11.2008, in Special Sessions Case No.36 of 2007. By the impugned judgment the learned Addl. Sessions Judge has convicted the accused for an offence under Section 382 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for a term of five years and to pay fine of Rs.5000/- each, in default to undergo rigorous imprisonment for one month.

2. The case of the prosecution is that on 8.2.2006 PW1-Pandurang Yadav had gone to Mulshi Dam by an Alto Car of Tanaji Yadav. On the same day at about 8.30 p.m. at village Paud, the accused and two others viz. Sachin Dhumal and Yogesh Sonawane had committed murder of Mahesh Bugade and fled away from the place of the incident. Pursuant to the first information report lodged by Ravindra Rasal Crime No.13 of 2006 under Section 302 of IPC was registered against the accused and ors. at Paud Police station for committing murder of Mahesh Bugade. It is alleged that when the accused reached near Mulshi Dam, they stopped the Alto car which was driven by Pandurang (PW1). The accused pulled him out of the car

by threatening him at the point of a revolver and went away with the car. It is alleged that there was a camera and two purses containing gold rings of 5 grams each and cash of Rs.2000/-, in the said car. PW1 lodged a report, pursuant to which Crime No.14 of 2006 was registered at Lonawala Police Station for offence under Section 382 r/w. 34 of IPC and the same was transferred from Lonawala to Paud Police Station. Both these crimes were separately investigated and upon completion of investigation two separate chargesheets were filed, and both cases were committed to the Court of Sessions at Pune.

3. By judgment dated 29/11/2008 the learned Ad-hoc Additional Sessions Judge, Pune, convicted the accused in Sessions Case No. 355 of 2006 for offence under Section 302 r/w. 34 of IPC. Being aggrieved by the said judgment the accused preferred Criminal Appeal No.1333 of 2008. By a separate judgment i.e. the impugned judgment dated 29.11.2008, in Sp.S.C. Case No. 36 of 2007 the accused have been convicted for the offence under Section 382 of IPC and sentenced as stated above. Aggrieved by this conviction and

sentence the accused have filed the present appeal.

4. It may be mentioned that Criminal Appeal No. 1333 of 2008 filed by the aforesaid accused challenging their conviction under Section 302 r/w. 34 of IPC has been allowed by the Division Bench of this Court by judgment dated 17.6.2015. The Division Bench of this Court after considering the evidence on record has held that the only eye witness examined by the prosecution has not supported the case of the prosecution. It was further held that the prosecution has also failed to prove the recovery of empty cartridges and pistols. The Division Bench of this Court has also held that in the absence of the direct evidence, no conviction could be passed on the basis of the ballistic report and the finger print report.

5. I have gone through the evidence of PW1 with the assistance of the learned Counsel for the appellant. A plain reading of his evidence clearly indicates that the PW1 had not identified the accused persons. A perusal of the FIR also reveals that he had also not given description of the persons involved in the crime. No

identification parade was held and consequently the identity of these accused persons was not established.

6. The only other piece of evidence relied upon by the prosecution is the ballistic report. The prosecution has examined PW8 to prove that the finger prints of the accused were found on the rear glass of the car. The witnesses i.e. PW4 and PW5, in whose presence the finger prints were allegedly taken have not supported the case of the prosecution. There is also no evidence to prove that the accused had used any weapon. It is also pertinent to note that the prosecution has relied upon the same evidence in the other crime under Section 302 IPC. The Division Bench of this Court, while acquitting the accused of the offence under Section 302 IPC vide judgment dt,17th June, 2015 has observed that the prosecution had failed to prove the connecting link between the offence and the recovery of bullet, pistol, finger prints etc. Hence the Division Bench had not relied upon the said ballistic report. It was also observed that in the absence of substantive evidence, the accused could not be convicted solely on the basis of corroborative evidence.

7. In the instant case, as stated earlier, there is no evidence to prove that the accused had pulled PW1 out of the car and that he had fled away with the car. In the absence of such evidence, they can't be held guilty solely on the basis of the expert evidence /ballistic report.

8. In the light of the above, the conviction and sentence cannot be sustained. The appeal is allowed. The accused are acquitted of the offence under Section 382 IPC.

. Fine amount, if deposited, be refunded to the accused.

(ANUJA PRABHUDESSAI, J.)