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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.930 OF 2014
WITH
CRIMINAL APPLICATION NO.980 OF 2017
IN
CRIMINAL APPEAL NO.930 OF 2014

Shaktisingh Deepaksingh Dudhani	)	
Age: about 24 yrs, Occ: Scrap Dealer	)	
R/at 429, Dias Plot, Gultekadi, Pune	)	 Appellant.
V/s		
The State of Maharashtra	)	 Respondent.

Mr. Debajyoti Talukdar for Appellant.
 Mrs. M.H. Mhatre, APP for Respondent – State.

CORAM: B. R. GAVAI &
B. P. COLABAWALLA, JJ.
DATE: 9th JANUARY, 2018

ORAL JUDGMENT: (Per B.R. Gavai, J.)

1] Appeal takes exception to the Judgment and Order passed by the learned Additional Sessions Judge in Sessions Case No.694 of 2011, dated 30/10/2014, thereby convicting the Appellant for the offence punishable under Section 302 of the Indian Penal Code and sentencing him to suffer imprisonment for life and to pay fine of Rs 5,000/- and in default, to suffer R.I. for three months. Appellant has been further convicted for the offence punishable under Section 188 of IPC and sentenced to suffer S.I. for one month and to pay fine of Rs 200/- and in default, to suffer S.I. for 15 days.

2] Prosecution case, as could be gathered from the material placed on record is thus:

3] Deceased Amol is son of the first informant Smt Ratan Kamble (P.W.1), who was residing alongwith the deceased and her husband Sunil at dias plot area. Appellant as well as the other accused and juvenile in conflict with law, Bhaktisingh and Babu Jogur were also residing in the same area. It is the prosecution case that there was lover affair between deceased Amol and sister of the Appellant Shaktisingh, viz. Raveena. It is the further prosecution case that the Appellant did not approve of the same. It is the further prosecution case that on the date of incident i.e on 12/07/2011, deceased Amol came to his cousin viz. Pappu Jambu @ Mohan Gaikwad, who was also residing in the nearby locality and requested him to come to play cricket match. Accordingly, Pappu (P.W.2) and other persons viz. Sagar Gaikwad, deceased Amol, Bunty, Bubbly, Abhi Londhe, Swapnil, Tushar and Sonya Pol went to play ground of Katariya High School, Gultekadi. At about 4 to 4.30 pm, when they were playing cricket, accused Shaktisingh alongwith his brother Bhaktisingh came there.

Accused Shaktisingh called Amol. After deceased and Appellant went to one side near Banyan Tree, Pappu (P.W.2) heard the voice of Amol “Ayee Ga”. When Pappu (P.W.2) went to the place from where shouts were coming, they saw that the Appellant and his brother and accused No.2 – Babu Jogur, were assaulting the deceased with wooden log. They also assaulted the deceased with beer bottle. On Sagar (P.W.6) asking the Appellant, as to why he was assaulting the deceased, the Appellant replied, as to what he would do if somebody keeps relations with his sister. It is the further prosecution case that the Appellant had picked up a stone lying there and was about to inflict a blow of stone on the head of Amol. At that time, Sagar Gaikwad pushed the accused Shaktisingh. In the meanwhile, some other persons came around and the accused ran away from the spot. Pappu Gaikwad and his friends took Amol to Dr. Chandan's hospital. However, Dr. Chandan (P.W.4) advised him to shift Amol to Sassoon Hospital. In the meantime, Pappu (P.W.2) informed about the incident to Ratan Kamble (P.W.1). Deceased Amol was taken to Sassoon Hospital and admitted there. He died at about 11.15 pm, same night.

4] On the basis of the oral report of Ratan Kamble (P.W.1), First

Information Report came to be lodged below Exhibit 61-A. On the basis of the First Information Report, investigation was carried out. At the conclusion of the investigation, charge-sheet came to be filed in the Court of the learned J.M.F.C., Court No.8, Pune against the three accused, including the Appellant. Since the case was exclusively triable by the Sessions Court, the same was committed to the learned Sessions Judge. The charge came to be framed against the Appellant and Babu Jogur for the offence punishable under Section 302 read with Section 34 and 188 IPC vide Exhibit-28. Since Bhaktisingh was juvenile in conflict with law, he was proceeded separately. During trial, accused Babu Jogur raised a plea of juvenility. In the inquiry proceedings, his claim was found to be correct and, as such, his name was deleted from the case and investigation officer was directed to file separate proceedings against him before the appropriate forum.

5] During trial, prosecution examined six witnesses, apart from producing other documentary evidence. At the conclusion of the trial, the learned Trial Judge held that prosecution has proved its case against the accused and as such, passed an order of conviction and sentence, as aforesaid. Being aggrieved thereby, the present appeal.

6] Mr. Talukdar, learned Counsel for the Appellant, submitted that the Judgment and Order passed by the learned Trial Judge is not at all sustainable in law. He submits that, though there were many independent witnesses available, prosecution for the reasons best known to it, has only examined Pappu (P.W.2), who is the cousin of the deceased Amol. He submits that since evidence of Pappu (P.W.2) is of interested witness, the same cannot be relied upon for convicting the Appellant. He submits that, Sagar (P.W.6) has turned hostile and as such, there is no reliable evidence to convict the Appellant. Learned Counsel therefore submits that, the appeal deserves to be allowed and the accused be acquitted of the charges levelled against him.

7] In the alternative, learned Counsel for the Appellant submits that, the prosecution has entirely failed to prove that the Appellant had an intention to cause death of the deceased. Learned Counsel submits that, in the absence of evidence to establish that the Appellant had an intention to cause death of the deceased, conviction under Section 302 is not maintainable and the case would fall under either

of the parts of Section 304 of IPC.

8] Mrs. Mhatre, learned APP, vehemently opposes the Appellant. She submits that merely because evidence of Pappu (P.W.2) is of interested witness, that by itself cannot be a ground to discard his testimony. She further submits that, evidence of Pappu (P.W.2) is duly corroborated by the First Information Report and the evidence of Ratan Kamble (P.W.1). She further submits that the death of Amol has been caused due to brain haemorrhage , which was as a result of the assault on the head of the deceased and as such, conviction has rightly been done under section 302. Learned APP therefore pressed for dismissal of the appeal.

9] With the assistance of learned APP and the learned Counsel for the Appellant, we have scrutinized the entire evidence on record. The prosecution case mainly rests on the evidence of Pappu (P.W.2). Though prosecution has also examined Sagar (P.W.6), he had not supported the prosecution case in its entirety and therefore was declared hostile. Insofar as evidence of Ratan Kamble (P.W.1) is concerned, she is not an eye witness. Report given by her is on the

basis of information given to her by Pappu (P.W.2) and as such, her evidence would not be of much assistance.

10] Evidence of Pappu (P.W.2) has been attempted to be assailed on the ground, he being relative of the deceased, is an interested witness and as such, could not be relied upon. By now, it is a settled principle of law that, merely because the witness is an interested witness, that by itself cannot be a ground for discarding his evidence. Only caution that is required to be exercised is that the evidence of such witness has to be scrutinized with greater caution and same can be relied only if it is found to be cogent, trustworthy and reliable. In the light of this principle, we have to examine the evidence of Pappu (P.W.2).

11] Perusal of evidence of Pappu (P.W.2) clearly reveals that, when he and his other friends were playing cricket, Shaktisingh and Bhaktisingh came there and called Amol. He was taken towards Banyan Tree. While they were playing cricket, they heard voice of Amol “Ayee Ga”. Hence, he, Sonya Pol and Sagar Gaikwad went towards Banyan Tree. They saw accused Shaktisingh assaulting deceased Amol on his stomach, chest with wooden log. He also

assaulted deceased with bracelet (Kada) in hand. Thereafter, Shaktisingh gave wooden log to Bhaktisingh and Bhaktisingh was assaulting Amol by wooden log. Accused Babu was assaulting Amol by fists and kicks. He further states that, Shaktisingh also assaulted deceased on his knee by beer bottles. Thereafter, in order to assault Amol, Shaktisingh picked up a stone lying there and when he was about to inflict a blow of stone on the head of Amol, Sagar pushed the accused Shaktisingh. Thereafter, some boys came there and accused Shaktisingh and his brother Bhaktisingh ran away from the spot. No doubt, there are many omissions and contradictions in the evidence of Pappu (P.W.2). However, insofar as the main incident of assault is concerned, his evidence has remained unshattered. Apart from that, it could also be seen that, though Sagar (P.W.6) has not supported the prosecution case in its entirety, he has stated in his evidence that when he, alongwith Pappu Gaikwad, Amol and others were playing cricket at around 4 pm, Bhaktisingh, accused Babu Jogur had come there alongwith 3 to 4 sardar boys. There was quarrel and boys started running here and there. It could thus be seen that, evidence of Pappu (P.W.2) regarding two boys coming on the spot and their quarrel taking place, corroborated the evidence of Sagar (P.W.6).

12] In that view of the matter, we are of the considered view that no interference is warranted with the finding of the learned Trial Judge that, it is the present Appellant who is the author of the crime of causing death of the deceased Amol.

13] That leads us to the next question, as to whether conviction under Section 302 needs to be maintained or altered to smaller offence. From the evidence of Pappu (P.W.2) itself, it would reveal that the Appellant had assaulted the deceased with a log and bracelet (Kada) in his hand. Not only this, from the evidence led on behalf of prosecution itself, it would reveal that the place where the incident had taken place, was having wooden logs and broken pieces of beer bottles. Even according to the prosecution, the log which was used by the Appellant was having length of 1 ft. 4 inches and diameter of 15 cm. It could thus be seen that it is not even the case of the prosecution that the Appellant had come on the spot of incident armed with some weapon. Though we have relied upon the evidence of Pappu (P.W.2) for coming to the conclusion that, it is on account of assault made by the Appellant that the death of the deceased is

caused, we find that the evidence given by him cannot be accepted to be hundred percent truthful. The principle that *falsus in uno falsus in omnibus* is not applicable in Indian Criminal Jurisprudence. The possibility of Pappu (P.W.2) giving exaggerated version, cannot be ruled out.

14] Apart from that, it could be seen from the evidence of Dr. Ajay Taware (P.W.3) that external injuries which were found on the person of the deceased were on non-vital parts. Though, cause of death is brain haemorrhage, in the postmortem report, no fracture of skull is found. Taking into consideration the weapon which is used in the crime, nature of injuries, parts of the body on which injuries were found, we are of the considered view that, it cannot be said that the accused-Appellant had an intention to cause death of the deceased Amol. It is quite possible that, enraged with the affair of the deceased with his sister Raveena, the Appellant might have come to threaten the deceased and teach him a lesson. In the scuffle, that took place, he might have assaulted the deceased by picking up a wooden log and pieces of beer bottle available there. It could be further seen that, as already discussed hereinabove, that there is no external injury on the

head of the deceased. We are therefore of the considered view that possibility of the deceased receiving fatal injury during scuffle, cannot be ruled out. However, from the material placed on record, it cannot be said that the Appellant had an intention to cause death of the deceased or such injury which would cause his death. In that view of the matter, we find that the case would not fall under Section 302 but it would fall under Part-II of Section 304 of the Indian Penal Code.

15] In the result, we pass the following order:-

ORDER

(i) Appeal is partly allowed. The order of conviction passed under Section 302 of IPC is altered to one under Part-II of Section 304 IPC. Accused is directed to suffer R.I. for ten years for the said offence.

(ii) Rest of the order of conviction including fine etc. is maintained.

(iii) In view disposal of the appeal, Criminal Application taken out therein does not survive and the same is also disposed of.

(B. P. COLABAWALLA, J.)

(B. R. GAVAI, J.)