

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION (ALS) NO. 98 OF 2019

State of Maharashtra ... Applicant

Versus

Namdev Pandurang Patil-Lugade & Ors. ... Respondents

Mr.J.P. Yagnik, APP for the State.

Mr. Ganesh Gole a/w Mr. Hemant Sharma for respondent nos. 1 to 4.

CORAM : B.P. DHARMADHIKARI &
SANDEEP KASHINATH SHINDE, JJ.
DATE : SEPTEMBER 20, 2019

P.C.:

Heard learned APP for the State and learned counsel for the respondent. Perused records. Learned APP seeks leave to place on record the oral evidence, Leave is granted.

2. The incident is dated 03/11/2013 in the night at about 22.30 hrs. The victim Sachin was assaulted by respondents and he was found in injured condition on the next day in the morning. He was then shifted to two hospitals and lastly to hospital of Dr. Prabhu at Kolhapur. There he expired on 06/11/2013.

3. The prosecution relies upon the evidence of PW 5 and PW 6

as also recovery of blood stained full pant from the person of one of the accused and blood stained weapon. It is not in dispute that as per CA report, the blood of group of deceased is found on the said full pant or on the said weapon.

4. The trial court has looked into all facts and evidence. The first report to police which led to registration of offence under section 307 IPC is of 06/11/2013. The said offence was then altered to one under section 302 IPC.

5. After death of the victim, statements of PW 5 and 6 have been recorded.

6. According to learned APP, a delayed report and therefore, delayed recording of statements of PW 5 and PW 6 cannot by itself be fatal to the case of the prosecution. He submits that the victim Sachin was taken at least to two hospitals prior to his admission in hospital at Kolhapur and in the process police was not informed. The eye witnesses categorically take names of respondents and point out the role played by them. The eye witnesses along with recovery and report of Chemical Analyzer therefore, are sufficient to convict the respondents.

7. Counsel for the respondents submits that there was previous enmity and because of that previous enmity, story has been fabricated.

8. He invites our attention to the fact that PW 5 and PW 6 did not help Sachin and also did not report the attack to his relatives. They appear to have visited hospital but then their conduct is appreciated by the trial court and there is no perversity in it. Their conduct throws cloud of doubt on their credibility. He submits that in the wake of this situation, the alleged recovery of blood stained full pant or weapon wooden clubs with blood of deceased on it, cannot be used to the prejudice of the respondent. According to him, as the trial court has taken a possible view, this Court should not intervene in the matter.

9. Though reporter Sandeep who happens to be brother of the deceased Sachin claims that in the morning on 4/11/2013 itself he got the phone call from the eye witnesses and learnt about the accused persons, the prosecution cannot substantiate the fact of receipt of phone call by him. Evidence of PW 5 and PW 6 shows that they have accompanied Sachin to hospital and witnesses claim that there they have disclosed the attack to Sandeep. If this version of eye witnesses is correct, the statement on oath by Sandeep that he got information on phone call from the eye witnesses cannot be accepted.

10. The eye witnesses claim that after learning that the victim was Sachin, they informed Sandeep about the attack. The trial

court had appreciated the conduct of these eye witnesses. One of the eye witness was passing through vehicle when he witnessed the attack. Both the eye witnesses have not seen each other at that time. However, both of them have approached Sandeep together and they also gone to hospital together. Not only this, if they were concerned about Sachin or Sandeep, they could have also reported the matter to police, but they have not done so. Police have got the first information only after admission of Sachin in the hospital at Kolhapur on 6/11/2013. In this situation, we do not find any perversity in the approach of the trial court. The possible view has been reached. We are therefore, not inclined to intervene in the matter. Leave application is therefore, rejected.

(SANDEEP KASHINATH SHINDE, J.)

(B.P. DHARMADHIKARI, J.)