

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.271 OF 2019

Mrs. Meghana Mangesh Lanjekar]
Age-50 years, Occ : Business]
R/a Gajanan Krupa, besides Siddhi Ganesh]
Temple, Paranjpe Chawl, Shiv Mandir Section]
Ambarnath (East), Thane -421501]..... Appellant.

Versus

1] The State of Maharashtra]
2] Ganesh Ishwar Gunjal]
Age 26 years, Occ : Rickshaw Driver,]
3] Sachin Arjun Dhotre]
Age 24 years, Occ :]
4] Ravindra Shankar Gunjal]
Age 43 years, Occ : Labour Contractor]
5] Ishwar Shankar Gunjal]
Age 48 years, Occ : Business]
All residing at Tanaji Nagar, Vadarwadi]
Opposite Shivsena Shakha,]
Ambernath (East), District : Thane]..... Respondents.

Mr. Manoj Mohite i/by Mr. Ashish S Sawant for the Appellant.
Mrs. M M Deshmukh, APP for the Respondent/State.
Mr. Kabul Singh Labana for Respondent Nos.2, 4 and 5.

CORAM : S. S. SHINDE &
N. B. SURYAWANSHI, JJ.
DATE : 26th NOVEMBER 2019

JUDGMENT (PER S. S. SHINDE, J.) :-

1 Heard. Admit. With the consent of the learned counsel for the parties taken up for final hearing.

2 By this Appeal the Appellant challenges the judgment and order dated 14/03/2017 passed by the learned Additional Sessions Judge, Kalyan in Sessions Case No.24/2014 thereby acquitting Respondent Nos.2 to 5 of the offences punishable under Sections 302, 341, 364, 427, 115 r/w 34 of the Indian Penal Code.

3 The Appellant herein is the wife of deceased Mangesh Lanjekar and the informant is Mr. Arvind Sakharam Lanjekar who is the brother of deceased. The informant and the deceased were running a cable business in the name and style of Aniket Cable Network and their office was situated at Indira Chowk, Mahalaxmi Nagar, Ambarnath (East). Prior to ten years of alleged incident, Accused No.3 Ravindra Gunjal was the friend of informant and was working with the informant and deceased Mangesh on monthly salary of Rs.6,000/- . After completion of three years service, Accused No.3 started his own cable business in Tanaji Nagar area. Thereafter, in order to increase his business, Accused No.3 forcibly tried to insert cable lines in the area where informant and deceased Mangesh were doing their cable business, and because of that a quarrel had taken place in between Accused No.3 and the informant and his deceased brother. It is alleged that on account of the said business rivalry, the quarrels took place between the Accused and the informant and his deceased brother, and the Accused threatened the deceased to kill him. Thereafter deceased Mangesh lodged a police complaint against Accused No.3

Ravindra.

4 On the date of alleged incident i.e. on 15/08/2013 the informant and his deceased brother Mangesh were in their cable office. After 2.30 deceased Mangesh went for opening ceremony of a petrol pump in their car bearing No.MH-05/AB-460. The informant and their employees closed their office and went for a lunch. Thereafter at about 3.45 pm deceased Mangesh gave a call to the informant on his mobile and asked him whether his son Aniket had come to house or not, and said that he will come to house within some time. After some time, the informant received a call from his friend Pravin Patil and informed him that something has happened with Mangesh alias Bhai at Rotary Club. Therefore, the informant immediately rushed towards the spot where he saw that their car and one Hero Honda Passion Motorcycle bearing No.MH-05/AD-9506 lying in front of their car. The persons, who gathered there, told the informant that his brother was taken to Ashwini Hospital. Therefore the informant immediately went to Ashwini Hospital, and from there with the help of police and other persons he took his brother to Central Hospital in a ambulance. At that time the informant saw various injuries on the face of his brother Mangesh, and the blood was oozing out. In the Central Hospital the doctors declared Mangesh as a dead. Thereafter informant lodged FIR on the same day i.e. 15/08/2013 implicating Respondent Nos. 2 to 5. PI Hemant Narhari Shinde recorded his FIR in Central

Hospital and forwarded it to the police station. PI Hemant Shinde also recorded the inquest panchanama in the hospital. On the basis of the FIR of the informant, a crime came to registered vide C.R.No.I-134/2013 against Respondent Nos. 2 to 5. Investigation was handed over to PI Hemant Shinde. He went to the spot of incident, prepared spot panchanama, seized the stone, floor tile, simple earth, and blood mixed earth from the spot while preparing spot panchanama. Thereafter PI Shinde arrested the accused and seized their clothes and prepared panchanama to that effect. During the course of investigation, PI Shinde recorded the statement of witnesses, and sent the muddemal for chemical analysis. He also recorded the statement of owner of the motorcycle which was used in offence. He along with PSI Gajjal took house searches of accused by drawing panchanama. Thereafter PI Shinde obtained post-mortem notes. The identification parade of the accused was also conducted by executive magistrate. After completion of investigation, PI Shinde submitted a charge-sheet in the Court of learned JMFC, Ulhasnagar.

5 As the offence under Section 302 is exclusively triable by the Court of Sessions, the learned JMFC, Ulhasnagar, committed the case to the Court of Sessions. Thereafter a charge came to be framed against the Accused at Exhibit 42, and the same came to be explained to the accused. The accused pleaded not guilty and claimed to be tried.

6 In order to bring home the guilt of the accused, the prosecution has examined 16 witnesses, including the informant, pancha witnesses, medical officer, Investigating Officer Hemant Shinde, and, Mr. Rammu Mohammad Shaikh (PW 8) and Mr. Ashish Ashok Gaikwad (PW 14) who alleged to have been an eye witness to the incident. After recording the evidence of the prosecution witnesses, the Sessions Court recorded the statements of the accused under Section 313 of the Code of Criminal Procedure. The defence of the accused is that of total denial and false implication. The Accused has not led any evidence in their defence.

7 The learned counsel for the Appellant submits that the Sessions Court did not appreciate the evidence on record properly. He submits that the deceased Mangesh was murdered by the accused on account of cable business rivalry and therefore the Sessions Court ought to have considered the motive for the murder. He further submits that there were earlier two incident in which the accused threatened the deceased that they will kill him, and there is direct evidence to that effect in the form of PW No.1 - Arvind Sakharam Lanjekar, and PW No.11 – Meghna Mangesh Lanjekar. He submits that there was a grudge in the mind of Accused against the deceased and his brother. He further submits that PW-8 – Rammu Shaikh, who is the eye witness of the alleged incident, identified Accused Nos.1 and 2 as the actual assailants. He submits that, the delay in recording the statement of eye witness – Rammu

Mohammad Shaikh (PW No.8) cannot be a ground to discard his evidence. It is submitted that the accused have been identified by eye witness Rammu Shaikh (PW 8) in the test identification parade which has been held by Rajendra Baburao Mukane (PW 16). He therefore submits that, this is a case wherein there is motive for commission of offence, and the evidence of eyewitness Rammu Shakh (PW 8) clearly shows the actual participation of Accused Nos.1 and 2 in the murder of deceased Mangesh. The learned counsel for the Appellant further submits that, the earlier incidents of threatening the deceased and his brother would clearly indicate that the accused had conspired to cause the pre-mediated murder of their business rival Mangesh Lanjekar. He lastly submits that the impugned judgment and order passed by the learned Additional Sessions Judge acquitting the Accused is not legal and proper, and the same is required to be quashed and set aside. He therefore submits that the Appeal may be allowed.

8 The learned counsel for Respondent Nos.2, 4 and 5 submit that the prosecution has failed to bring home the guilt of the accused. It is also submitted that, the prosecution has failed to prove the motive of the accused to commit murder of Mangesh. He submits that there is no enough material to establish the fact that there was a cable business rivalry between the Accused and the deceased and his brother. The learned counsel for the Respondents-Accused also submits that, the FIR is lodged by the brother of deceased who

was not the eyewitness of the alleged incident and therefore it is merely on suspicion and without any knowledge or information about the alleged incident. He submits that there are contradictions in the evidence of eye witness regarding the timing and place of alleged incident. He also submits that there is no corroborative evidence adduced by the prosecution to show the involvement of the accused in the alleged murder of Mangesh. He therefore submits that the learned Additional Sessions Judge after considering the evidence and material on record has rightly acquitted the accused. The impugned judgment and order passed by the learned Additional Sessions Judge is well reasoned judgment and order of acquittal, and needs no interference at the hands of this Court. He therefore submits that the Appeal filed by the Appellant may be dismissed.

9 Heard the learned counsel for the Appellant, the learned APP for the Respondent/State, and the learned counsel for Respondent Nos. 2, 4 and 5. With their able assistance we have perused the notes of evidence placed on record by the Appellant, and the reasons recorded by the learned Additional Sessions Judge in the impugned judgment.

10 Though the prosecution has examined 16 witnesses to prove the guilt of the accused, the entire prosecution case is based upon the evidence of eye witnesses i.e. Rammu Mohammad Shaikh (PW 8) and Ashish Ashok

Gaikwad (PW 14) who alleged to have seen the incident. It is required to be noted at this stage that out of the 16 witness, Rajnath Ropannath Jaiswar (PW-3); Dilip Trimbak Rajguru (PW 4); Prashant Namdeo Bhosale (PW 6); Kajalsingh Chandansingh Dudhane (PW 7); Shantabai Anna Pawar (pw 13), AND Ashish Ashok Gaikwad (pw 14) have turned hostile, and nothing has elicited in their respective cross examinations taken by the learned APP which could be used against the accused to rope them in the alleged crime.

11 Perusal of the evidence of Medical Officer Mr. Hemantkumar Devdutt Khambayeet (PW 9) shows that, he found two injuries on the dead body, one is at left front region and another is at vertex region and there was fracture of skull also. He has further deposed that on internal examination of brain he found large diffused subgalleal hemorrhagic contusion under scalp area. There was fracture of vault left frontal bone of left frontal fossas. The injuries were ante mortem. The cause of death was due to head injury in the form of fracture skull bone with intra cranial hemorrhage and the cause of the injuries was hard and blunt object. The Medical Officer stated that the injuries are possible by a piece of a floor tile.

12 Therefore it is clear from the evidence of Medical Officer (PW 9) that the deceased Mangesh has died homicidal death. Therefore the question which needs to be answered is, whether the prosecution has proved that the

accused are the author of the said homicidal death. For that purpose the evidence of informant and eye witnesses is required to be scrutinized.

13 Mr. Ashish Ashok Gaikwad (PW 14), who is alleged to have seen the incident, is not supporting the prosecution case, hence he was declared hostile. He was cross examined by the learned APP. However, nothing has come on record from his evidence which can be said to be helpful or useful to the prosecution to prove the guilt of the accused. This witness (PW 14) in his cross examination stated that the portion marked "A" of his statement, which was read over to him during the course of evidence, was not correct and he has not stated it to the police. He also could not assign any reason as to how it is written so.

14 The prosecution case, therefore, rests only upon direct evidence of eye witness Mr. Ramu Mohamed Shaikh (PW 8). Therefore the evidence of this witness would have to be looked into carefully. In his examination in chief, PW-8 stated that on 15/08/2013 in the morning he was proceeding towards Ambernath (East) for filling petrol in his motorcycle, at that time he saw quarrel taking in Gadha Chowk in front of Sindhudurg Bank. Jay Hind Bank is also located in that chowk. He stated that two persons were beating one person by tiles. Those two persons who were beating that one person were young boys. He stated that he would identify those young boys by seeing

them in the Court. The witness pointed towards accused No.1 Ganesh Gunjal and accused No.2 Sachin Dhotre and stated that they are the same boys who were beating one person by tiles. He further stated that the police had called him in Adharwadi jail for test identification parade, and in that test identification parade, he identified two persons by pointing fingers towards each from two groups. He further stated that the two accused who he had identified today in the Court are the same accused persons. He stated that the police wrote the test identification panchanama and obtained his signature on it.

In the cross examination this eye witness Rammu Shaikh (PW 8) admitted that, he was knowing the informant Arvind Lanjekar previously. He also admitted that he had purchased the car of Arvind Lanjekar before five years from the date of recording of his evidence. He stated in his cross examination that police had called him after 15-20 days of the incident, and at that time police had already called accused No.1 Ganesh Gunjal and accused No.2 Sachin Dhotre. He stated that he does not remember as to whether police had recorded his statement on 2.9.2013 or not. He admitted that he had not stated to police the ages of those two person. He stated to the police that two persons who were beating the one person were young boys. However, he could not assign any reason as to why the said fact is not mentioned in his statement recorded by police. He also stated that he had not stated the

physical description of those two persons to the police. He stated that on the next day of incident he had seen and heard the news on T.V. as to who is killed and who has killed him. In his further cross examination, Rammnu Shaikh (PW 8) stated that he does not remember as to after how many days of recording his statement he was called in Adharwadi Jail. He admitted that police had taken him to Adharwadi Jail for test identification parade. In his further cross examination PW-8 stated that, he had stated to the police that he had seen two person beating one person by tiles in front of Sindhudurg Bank, Gada Chowk. (In his statement words 'Gada Chowk' and 'Sindhudurg Bank' were missing). He further stated that he does not know as to, whether Jaihind Bank is at the distance of 100 meters from Sindhudurg Bank or not, and he does not know as to in which chowk Jaihind Bank is located. He also admitted that Gada Chowk and Rotary Club chowk are two different chowks.

15 We have also scrutinized the evidence of PW No.1 Arvind Lanjekar, who is the brother of deceased and, the evidence of IO Hemant Narhari Shinde (PW-15). PW 1 Arvind Lanjekar has stated that the accused have committed murder of Mangesh because of cable business rivalry. PW No.1 stated that, he and his brother were sitting in their office till 2.30 pm and after 2.30 pm his brother Mangesh went for opening ceremony of a petrol pump in their car numbering MH-05/AB-460. At 3.45 pm he received phone call of his brother Mangesh on his mobile phone who asked him whether his son Aniket had

come to house or not and said that he would come to house within some time. This witness also stated that at 4.00 pm he received phone call of his friend Pravin Patil and asked him, as to whether something has happened with bhai at Rotary club. He also admitted in his cross examination that firstly, he lodged his FIR to police and thereafter police prepared panchanama of the dead body.

16 The Investigating Officer Hemant Shinde (PW 15) in his cross examination admitted that on 15/08/2013 phone was received on the landline of their police station at 4.00 pm that quarrel was going on near Rotary Club. The Investigating Officer has also admitted in his cross examination that, he has recorded the statement of witness Rammu Shaikh on 02/09/2013 in the police station. He further admitted that he learnt regarding the names of eye witnesses on 15/08/2013 itself. He stated that he has recorded statements of three eye witnesses who have actually seen the accused beating the deceased. He also stated that statement of one eye witness by name Poonaram Manaram Meena is recorded on 15/08/2013 itself i.e. on the day of incident itself and the statements of remaining two eye witnesses are recorded on 02/09/2013.

17 From the aforesaid evidence of informant Arvind Lanjekar (PW 1) who is brother of deceased, it is crystal clear that the deceased had talk with him on his mobile at 3.45 pm and thereafter the informant received phone call of his friend Pravin Patil at 4.00 pm who had asked him, as to whether

something has happened with deceased at Rotary Club. Therefore it is crystal clear that the alleged incident has taken place after 3.45 pm.

18 Now coming to the evidence of eye witness Rammu Mohammad Shaikh (PW 8) who has deposed that on 15/08/2013 in the morning he was proceeding towards Ambernath for filling petrol in his motorcycle, and at that time, he saw quarrel taking place in Gada Chowk in front of Sindhudurg Bank. As per the version of this eye witness (PW 8), the alleged incident has taken place in the morning of 15/08/2013 while according to the informant (PW-1) the alleged incident has taken place after 3.45 pm. This is a material contradiction, and significantly the different timing of the incident stated by the informant (PW-1) creates doubt regarding the veracity of eye witness (PW 8).

19 From the evidence Investigating Officer it is clear that the alleged incident has taken place at 4.00 pm and not in the morning as deposed by eye witness (PW 8). Significantly it is clear from the evidence of the aforesaid witnesses that, they have stated different timings of the alleged incident, PW 8 Rammu Shaikh has deposed the timing of incident in the morning, whereas PW 1 – Arvind Lanjekar and PW 15 Hemant Shinde, have deposed the timing of incident at 4.00 pm.

20 In so far as the place of incident is concerned, there are contradictions in the evidence of eye witness Rammu Shaikh (PW 8). In his examination in chief he has deposed that the incident took place in Gadha chowk in front of Sindhudurg Bank, however, in his cross examination he admitted that Gadha Chowk and Rotary Club Chowk are two different Chowks. So also the IO Hemant Shinde (PW 15) has deposed in his evidence that he received a phone on 15/08/2013 at 4.00 pm that the quarrel was going on near Rotary Club. So also the informant Arvind Lanjekar (PW 1) has also deposed that he received phone call at 4.00 pm of his friend Pravin Patil who asked him as to whether something has happened with Bhai (i.e. deceased) at Rotary Club. Thus the eye witness (PW 8) has deposed a very significantly different place of the incident.

21 On the basis of the aforesaid evidence and material on record, the learned Additional Sessions Judge has come to a conclusion that eye witness Rammu Mjohammad Shaikh has not only stated the different time of the incident but has also stated the different spot of the incident thereby adding to the doubt to his veracity. The learned Additional Sessions Judge has also observed that there is a delay in recording the statement by the Investigating Officer. This fact is also admitted by the Investigating Officer in his cross examination that he has recorded statement of witness Rammu Shaikh on 02/09/2013. Obviously there is a delay of 17 days in recording the statement

of eye witness Rammu Shaikh (PW 8). When the Investigating Officer was knowing that Rammu Shaikh (PW 8) had witnessed the incident on the day of incident itself then why he did not record the statement of this witness immediately on the same day. The learned Additional Sessions Judge has rightly recorded a finding that if Rammu Shaikh (PW 8) had really seen two of the accused beating Mangesh Lanjekar who was known to him, then he certainly ought to have told the said fact to Arvind Lanjekar or police immediately after seeing the quarrel, however, this witness has kept quiet for almost 17 days which makes out an unnatural conduct.

22 From the aforesaid discussion it is clear that the evidence of eye witness Rammu Shaikh (PW 8) does not inspire confidence and, his evidence is not trustworthy. Considering the material on record and the evidence adduced by the prosecution, we are of the view that, the prosecution has failed to establish the involvement of the accused persons in the incident and also failed to prove that the accused are responsible for causing death of deceased Mangesh. There is no enough material on record to prove the motive of the accused to commit murder of deceased Mangesh. The view taken by the learned Additional Sessions Judge is a plausible view. The impugned judgment and order passed by the Sessions Court is proper. There is no perversity in the impugned judgment and order passed by the learned Additional Sessions Judge. The prosecution has failed to prove any of the charges levelled against

the accused beyond reasonable doubt.

23 In that view of the matter, there is no merit in this Appeal against acquittal, and hence the same deserves no consideration. Accordingly Criminal Appeal stands dismissed.

(N. B. SURYAWANSHI, J.)

(S. S. SHINDE, J.)