

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 988 OF 2018

1. Sanjay Khadakbahadur Dube.
Age: 48 years Occ: Convict,
Presently lodged at Kolhapur Central ... Appellants.
Prison, Kalamba, Dist. Kolhapur-7.

2. Jawahar Kapildev Maurya.
Age: 35 years. R/at. Umergaon, Gandhi
Nagar, Gujarat.

v/s.

The State of Maharashtra ... Respondent.

Mr. Kartik Garg, advocate appointed for appellants.

Ms. M.H. Mhatre, APP for State.

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**CORAM : SMT. SADHANA S. JADHAV &
N.R. BORKAR, JJ.**

RESERVED ON : APRIL 1, 2021.

PRONOUNCED ON : SEPTEMBER 2, 2021.

JUDGMENT (PER SMT. SADHANA S. JADHAV, J)

1 The appellants herein are convicted by the Additional Session Judge, Kalyan, in Session Case No. 231 of 2010 for offences punishable under section 302 r/w. section 34 of Indian Penal Code and section 392, 394 r/w. section 397 of Indian Penal Code vide Judgment and Order dated 29th January, 2018. The appellants are

sentenced to suffer imprisonment for life and to pay fine of Rs. Twenty Five thousand each I.d. to suffer further R.I. for two years for offence punishable under section 302 read with section 34 of the Indian Penal Code and to suffer Imprisonment of Life and to pay fine of Rs. 5,000/- each I.d. to suffer further R.I. for six months for offence punishable under section 392, 394 read with section 397 of the Indian Penal Code. Being aggrieved from the Judgment and Order, the accused have filed this appeal.

2 Such of the facts necessary for the decision of this appeal are as follows :

(i) On 22nd February, 2010 one Dnyaneshwar Desale (P.W.1) lodged a report at Kulgaon Police Station informing the police therein that a dead body of an unidentified person was found in his agricultural land known as “Kakdicha mala” situated in village Asnoli. Crime No. 6 of 2010 was registered for offence punishable under section 302 of Indian Penal Code against unknown person. In the course of investigation, the dead body was identified as that of Rajkumar Bansode.

(ii) A Xylo car was seized by Manpada Police in Crime No. 47 of 2010 registered at the instance of Umesh Kondlikar (PW.13) on the same day i.e. on 22/02/2010. Umesh Kondlikar was working as a Driver with Builder PW. 2 Sanjay Dargad and was driving his car at the relevant time.

3 PW. 14 Udhhav Chaudhary was working as a travel agent for P.W.2. On 20/2/2010 at about 6 p.m. one person had inquired with him for Innova vehicle to go to Shirdi. PW. 14 had offered Xylo. The said person had confirmed the booking for Xylo vehicle in the name of Sanjay Dube. He had also disclosed his name. Accordingly, PW.13 had booked the vehicle of P.W.5 Anil Walve. Then, he had sent the vehicle near Ayyappa Mandir.

4 The prosecution case is put forth by PW 2 Sanjay Dargad who has deposed before the police that accused No. 1 Sanjay Dubey was working for him as a driver during the period 2008 to 2010. He had committed a theft of Rs. Five lakhs kept in the vehicle and had abandoned the vehicle and hence, he had lodged a report against accused No 1. That accused No. 1 was not a local resident. On the day

of incident at about 11.30 p.m after having his meals, he was returning home in his Tata Manza car, which was driven by P.W. 13. A Xylo jeep had followed his car for some time. The Xylo jeep then obstructed his way. He alighted from his car and hid himself below the pipeline. The driver of Xylo had then stopped his car. He saw the accused No.1 Dubey firing at his driver. The accused No. 1 had then abandoned the Xylo car upon seeing the villagers approaching towards the car. One of his mobile handsets was with P.W13. The police had reached the spot within 10 minutes and P.W.13 was given medical treatment at the earliest, due to which he was saved. It appears from the cross-examination of P.W.2 that the daily schedule and route of P.W.2 was well known to the accused persons. The defence had tried to elicit omissions and contradictions, however, it was a frail attempt.

5 P.W. 13 has corroborated the evidence of P.W.2. According to him, at 10.45 p.m. P.W.2 returned to the vehicle from Rangoli Hotel and when they were passing Nevali Phata, one Xylo vehicle approached him from left side and signals him to stop the car. Accordingly, he stopped the vehicle. One person from Xylo car attempted to break the window of his car by a country-made revolver.

At that juncture, P.W. 2 Dargad told to start the vehicle and go in full speed, but when they reached near the village Hedutane, P.W.2 asked him to stop the vehicle and alighted from the car. He was also directed by P.W.2 to run away and he hid himself in the bushes. By then, two persons from Xylo car reached him and fired him on the left side of his chest, thereafter they took away that Tata Manza car belonging to P.W.2. As far as the incident is considered, he could not be shattered in his cross-examination. He admitted that he had seen both the accused in Kalyan Crime Unit office. He was called for the Test Identification Parade after three months in Adharwadi Jail. In any case, the test identification parade will lose its significance since the accused were shown in the Crime Unit Office.

6 The autopsy on the dead body of Rajkumar was done by P.W.15 Dr. Sanjay Gaiwal on 23rd February, 2010 he has proved the post mortem notes, which are marked at Exh. 73. According to him, the dead body was completely decomposed. There was a firearm entry wound behind the left ear. The bullet had passed through left temporal bone and the exit wound was over the right temporal region. Another firearm entry wound was at right side of the chest below the right

clavicle region. The bullet was lodged in right fifth intercostal space over lateral part of chest. There was one more firearm entry wound above left nipple and the bullet was lodged in seventh left intercostal muscle subcutaneously. All the three fire wound injuries were independent and were on the different parts of the body.

7 According to P.W. 5, Anil Walve happens to be the owner of the Xylo Car MH-43-9841 and he had employed Raju Bansode as a driver. That the deceased Raju Bansode has expressed his desire to visit Shirdi. His Xylo car was engaged by Udhav Chaudhary at the relevant time. P.W. 5 had the cell phone number of accused No. 1, as booking for the said Xylo car was made through PW 2. He had also spoken to Accused No. 1 when the booking was made. PW.5 claims to have received a phone call from Manpada Police station informing him that his Xylo car was abandoned near toll naka and the driver is not present in the car. The phone call made by PW 5 to Raju was received by accused No. 1 who informed him that Raju had gone to attend nature's call.

8 According to P.W. 5, Uddhav Chaudhary was his travel

agent. The passenger who hired his car was known to Chaudhary and the charges were also settled by Uddhav Chaudhary.

9 The dead body of Rajkumar Bansode was identified by P.W.6 Siddhant Suryawanshi who happens to be a close relative of Rajkumar Bansode. P.W. 6 has noticed stab wounds on the chest, neck, and ear.

10 The prosecution has examined P.W. 8 Nivruti Bhandari, sarpanch of village of Hedutne. On 22nd February 2010 some untoward incident had happened on Shil Kalyan Road. When he went there, he found a Xylo Car parked there and a person was found lying near the vehicle. Upon inquiry, the said injured had informed him that two unknown persons had fired on him. The said injured had narrated the entire incident to P.W. 8. The injured was Umesh Kondilkar. P.W. 8 had informed the police about the same.

11 P.W. 11 Darshan Manjekar was the employer of accused No. 1. P.W.11 deposed before the Court that on 21st and 22nd February 2010 the accused No.1 had not reported for duty. He had identified the

accused No. 1 before the court.

12 In the course of the investigation, it had transpired that deceased Rajkumar was using the Vodaphone SIM card issued in the name of Vinod Sutar. He had also accompanied the uncle of deceased namely, Chandrakant Bansode to identify the dead body of Rajkumar.

13 In the course of investigation, the accused had lead the Investigating Officer P.W. 16 Pratap Mankar to village Asnoli. When the search was taken by the metal detector, an empty fired cartridge was found in the agricultural land, where the dead body of Rajkumar Bansode was abandoned. The weapon of assault was found in the drainage at Taloja Kalamboli. The recovery is proved by P.W.16.

14 The Vodafone Service Provider had proved that the cell phone No. 9930502405 was in the name of accused No.1. Similarly, cell phone No. 9769242203 was also standing in the name of accused No. 1 and he had booked the Xylo car. Uddhav Chaudhary had given his cell phone number and it is proved that on 22/02/2010 the Xylo car was booked on cell phone No. 9930502405. Even according to P.W.

16, there was no direct witness to the incident. P.W.16 has not obtained certificate under section 64B of Indian Evidence Act from the service provider.

15 This is case of circumstantial evidence. The defence of the accused is of total denial. The circumstance that are proved against the accused are as follows :

(i) That the accused had booked Xylo car on 22/02/2010. The said fact is proved on the basis of the call detail record of Uddhav Chaudhary.

(ii) The said Xylo car was driven by Rajkumar Bansode the deceased, whose dead body was found in village Asnoli.

(iii) The said Xylo car was then driven by accused No. 1, and he had chased the vehicle of PW 2 Sanjay Dargad. PW 2 and P.W. 13 had recognised accused No. 1 while he was attempting to smash the window of Tata Manza car.

(iv) There was no necessity of test identification parade as accused No. 1 was working as a driver with PW.2 for two years. He had also recognised accused No. 2, who had accompanied

accused No. 1 at the time of incident.

(v) Accused No. 2 was known to P.W. 2 even before the incident and he had seen accused Nos. 1 and 2 together on several occasions.

(vi) The testimony of P.W.2 and P.W.13 Umesh Kondilkar could not be shattered.

(vii) The deceased Rajkumar was neither seen nor heard of after he had taken the car, to the accused persons, as per the instruction of P.W. 5. The deceased was lastly in the company of accused and thereafter, his dead body was found abandoned.

(viii) Hence, the only inference that can be drawn is that Rajkumar had succumbed to the injuries, which he had sustained at the hands of the accused persons. It cannot be said that the task was undertaken by accused No. 1 alone. Both the accused has shared the common intention. The accused had planned to kill P.W. 2 and for that purpose, had stolen the Xylo car by killing the driver of the vehicle, who otherwise would have been the witness.

16 It is clear from the records that Xylo car was hired with

intention to follow P.W. 2 and cause harm to him. The driver of the hired Xylo car was killed by the accused and his dead body was abandoned and thereafter, the accused had stolen Xylo car, followed P.W. 2, they had shot the driver of P.W. 2 and then fled from the spot after abandoning Xylo car. After causing harm to P.W. 13 the accused had abandoned Xylo car and had taken away Tata Manza car towards Badlapur. Hence, offence under section 397 of the Indian Penal Code is proved against the accused.

17 Hence, in view of the above discussion, it can be said that the prosecution has proved its case beyond reasonable doubt. The judgment of the Sessions Court calls for no interference.

18 Before parting with the Judgment, we appreciate the efforts taken by learned Counsel appointed for the appellants. He is entitled to professional fees as per the rules.

19 Hence following order is passed :

ORDER

(i) The appeal is dismissed.

(ii) The conviction and sentence imposed on the appellants vide Judgment and Order dated 29/1/2018 passed by Additional Session Judge, Kalyan, in Session Case No. 231 of 2010 is hereby confirmed.

(iii) The appeal is disposed of accordingly.

(N.R. BORKAR, J)

(SMT. SADHANA S. JADHAV, J)