

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

CRIMINAL APPEAL NO.79 OF 2018

Mahesh Thakur Singh @ Bhutta Singh
@ Brijbhushan Singh

... Appellant

Versus

The State of Maharashtra & another

... Respondents

....

Mr. Shakil Ahmed, Advocate for the Appellant.

Mr. A.A. Palkar, APP, for Respondent No.1-State.

Mr. Shailesh Kharat, Advocate (appointed) for Respondent No.2.

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**CORAM : SMT. SADHANA S. JADHAV &
SARANG V. KOTWAL, JJ.**

RESERVED ON : 28th FEBRUARY, 2022

PRONOUNCED ON : 04th MARCH, 2022

JUDGMENT : [*PER SARANG V. KOTWAL, J.*]

1 The appellant was the sole accused in Sessions Case No.977/2015 before the Sessions Judge for Greater Mumbai facing charges of commission of offence punishable under Section 302 of the Indian Penal Code. At the conclusion of the trial, by the impugned judgment and order dated 5.5.2017, the learned Sessions Judge, Greater Mumbai convicted the Appellant for the

offence punishable under Section 302 of IPC and sentenced him to suffer imprisonment for life and to pay a fine of Rs.10,000/-; and in default to undergo sentence of three months. The amount of fine was directed to be paid to PW-12, who was wife of the victim. In addition, the District Legal Services Authority was directed to grant compensation of Rs.1 Lakhs to her in accordance with the scheme under Section 357A of Cr.PC..

2 Heard Mr.Shakil Ahmed, learned counsel for the Appellant, Mr. A.A. Palkar, learned APP for the State and Mr. Shailesh Kharat, learned counsel appointed for Respondent No.2.

3 The prosecution case is that, in the night of 9th to 10th August, 2015 between 1.30 a.m. to 2.45 a.m. at Zenith Building, Keshav Pada, Mulund (West), the Appellant committed murder of one Ganesh Gaur by assaulting him with a toilet-trap.

4 In support of its case, the prosecution examined fourteen witnesses. The important witnesses were PW-1 Janardhan Dubey and PW-2 Shivkumar @ Shiva Chauhan. The other witnesses were the panchas, wife of the deceased, other security guards and the

investigating officers. Besides the deposition of witnesses, the prosecution produced Chemical Analysis reports on record.

5 The defence of the Appellant was of total denial.

6 PW-1 Janardhan Dubey had lodged the FIR, which is produced on record at Exhibit-8. He has stated that he was working as a Security Guard at Zenith building, where construction work was going on. He was allotted one room on the ground floor for residing. There were twenty labourers doing work of polishing marble. He was knowing the deceased, PW-2 Shiva and one Ramji. All of them were residing on the ground floor in a room in B-Wing. PW-1 was also residing in B-Wing. There were three parking space floors having numbers “P-1”, “P-2” and “P-3”. From then onwards, the first floor of the building started. This witness used to lock that floor so that no one could enter the building above the parking space. On 9.8.2015, in the night he was on duty. At around 1.30 a.m. on 10.8.2015, he was sleeping in his room. Before that, as usual, he had locked the first floor of the building. At about 3.45 a.m., PW-2 Shiva woke him from sleep. He was told by Shiva that there was some problem at “P-2” parking space. Both of them went

there. They saw that the Appellant was standing in front of his room. He told them that there was some problem on the 11th floor. This witness was sure that nothing could happen on the 11th floor as the entrance of the floor was locked. Instead, he searched on the same parking space “P-2”. He saw that Ganesh was lying in a pool of blood near a commode. There were blood stains on that commode. As he made enquiries with the Appellant, he looked disturbed and frightened. He was about to run away but PW-1 and PW-2 caught him and locked him in a room. PW-1 then called the police and handed over the Appellant to the police. His statement was recorded, which was treated as FIR.

He was cross-examined on the point of number of security guards employed, about the position at “A-Wing”, about the entire area of Zenith building. This was hardly of any consequence. He has admitted in the cross-examination that he searched at “P-2” parking floor after that they came out; and then they saw that the Appellant was standing in front of his hut. He denied the suggestion that he was deposing falsely.

7 PW-2 Shivkumar @ Shiva Chauhan was another

important witness. He has stated that on 9.8.2015 he himself, the deceased Ganesh and the Appellant had gone out to consume liquor in the evening. After returning, they had food. One Ramji was sleeping in the hut. This witness slept near the door. The deceased Ganesh and the Appellant went on the second floor of the parking at about 10.00 p.m.. At 3.30 a.m., the Appellant himself woke him up and told him that there was some problem on the 11th floor and the deceased was injured with a rod. PW-2 then called PW-1. Both of them went to the second floor of the parking. The Appellant stayed on the ground floor. They found the dead body of the deceased near that commode. Then the Appellant was locked in a room. The police were called.

In the cross-examination, he has stated that the Appellant told him that there was scuffle between them and that the deceased was injured by a rod.

8 PW-3 Pradeep Shirodkar was a pancha for spot panchanama. He has stated that during conducting the spot panchnama, they recovered a toilet-trap and a pair of foot-wear. There was no reference to commode. The murder weapon as

mentioned in the spot panchnama was a stone which is normally used in sanitary fixtures and not commode.

9 PW-4 Dr. Sanjay Wathore had conducted the postmortem examination. There were ten injuries to the deceased and the fatal injuries were on the head. The cause of death was mentioned as “death due to head injury coupled with fracture of skull bones with consumption of alcohol.”.

10 PW-5 Nilesh Barot was a pancha, in whose presence the Appellant had given statement showing his willingness to produce his clothes which he had concealed in a room. Pursuant to that statement, his shirt, pant and a pair of footwear were recovered.

11 PW-6 Deviprasad Mishra was one of the security guards. His evidence is not important. He has not deposed on any material point. PW-7 Vilas Gosavi had carried the articles to F.S.L. Kalina. PW-8 Prashant Bhandary was a Bar owner. He has deposed that PW-2, deceased and the Appellant had gone to his Bar between 8.00 p.m. to 9.00 p.m. on 9.8.2015 to consume liquor. PW-9 Mohan More was another security guard. He had guarded the place after

the incident till the police came there. PW-10 Jeetlal Saroj had employed the deceased, Shiva, Ramaji and others. PW-11 Arun Soni was another security guard at the building and he had seen that Shiva, PW-2, the deceased, the Appellant and Ramji had returned to Zenith building on 9.8.2015 at 11.30 p.m. after drinking liquor. According to this witness, PW-2 was saying that the Appellant had assaulted the deceased. PW-12 Poonam is the widow of the deceased. She had spoken about quarrel between the Appellant and the deceased on the subject of adjoining lands at their native place. There is omission in her police statement about Appellant wanting to purchase that land. PW-13 PSI Jagdish Borse and PW-14 PI Keshavkumar Kasar had conducted the investigation and had recorded statements of the witnesses.

12 Learned counsel for the Appellant submitted that the evidence of PW-1 and PW-2 is not trustworthy. There is no direct evidence. The circumstantial evidence is weak in nature in this case. The circumstances individually are not proved and they certainly do not form a complete chain against the Appellant. The evidence of recovery is not proved by the prosecution; and in any

case, it is not incriminating as the prosecution has not ruled out a possibility that the blood on the clothes recovered at the instance of the Appellant was not his own blood.

13 Learned APP relied on the same circumstances i.e. evidence of PW-1 and PW-2 as well as evidence of recovery, to contend that the prosecution has proved its case beyond reasonable doubt.

14 We have considered these submissions. As can be seen from the above, the important evidence is that of PW-1 and PW-2. The analysis of evidence of both these witnesses shows that according to them, the Appellant himself had approached PW-2 and had told him that there was some problem on the 11th floor. PW-2, in turn, informed PW-1 and both of them searched for some signs at “P-2” parking space. This itself is little doubtful because the Appellant had told them that there was problem on the 11th floor. Therefore, the natural conduct would be to go to the 11th floor. Though PW-1 has explained that since he had locked the main entrance door, it was impossible for anyone to go to the 11th floor, it still does not answer the question as to why they would go

to “P-2” parking space immediately because the Appellant had not told them that there was some problem at “P-2” parking space. Their evidence shows that both these witnesses had gone to sleep on the ground floor. From there, they straightway went to the “P-2” parking space.

15 There is also no reason for the Appellant to wake up PW-2 and tell him about some incident on the 11th floor. Though PW-2 has stated that the Appellant and the deceased had gone to sleep on “P-2” parking space, he himself had not seen them going there as he had gone to sleep on the ground floor. There is nothing on record brought out by the prosecution to indicate that the Appellant and the deceased used to sleep at parking space “P-2”. Their room was on the ground floor.

16 The learned Judge has relied on the circumstance of ‘last seen together’. The learned Judge has relied on the evidence of PW-2 for that purpose. PW-11 has stated that at about 11.30 p.m. in the night PW-2, the Appellant, the deceased as well as one Ramji had returned together. Therefore, the deceased was not seen exclusively in the company of the Appellant. There were others,

namely, PW-2 Shiva as well as Ramji. At any rate, even if PW-2 Shiva is excluded as per his deposition, Ramji was still there with the deceased and the Appellant, according to PW-11. Therefore, this circumstance cannot be held as a conclusive piece of evidence only against the Appellant. He was not the only person who was in the company of the deceased. The prosecution has not brought out any evidence in respect of this Ramji. The prosecution case is silent on this point.

17 PW-1 and PW-2 have deposed that the Appellant's conduct was doubtful but that could be their inference. It was the Appellant himself who had woken up PW-2. He had not tried to run away. He was visibly shaken. Inferences of these witnesses cannot take place of conclusive proof against the Appellant.

18 The next important piece of evidence is about recovery of blood stained clothes at the instance of the Appellant. According to the prosecution case, the Appellant has given his statement which was recorded in the presence of pancha on 12.8.2015. Though the statement mentions that the Appellant had shown willingness to take out clothes which he had concealed, the statement itself does

not mention the place where he had concealed those clothes. He led the panchas and the police to a room of B-Wing of Zenith building on the first floor. It was a temporary room. It was not locked. It was accessible to all. He had taken out a shirt, a pant and a pair of foot-wear. The C.A. report shows that there was blood of “B-Group” on the shirt and on the jeans-pant. No blood was detected on the foot-wear recovered at his instance. The blood group of the deceased was also “B-Group”. The evidence shows that there is another C.A. report showing the blood group of the Appellant himself as “B-Group”. Therefore, the prosecution has not ruled out the possibility that the blood found on the Appellant’s clothes was his own. They have not proved that it was of the deceased alone. Significantly, no blood was found on the Appellant’s foot-wear, which is also an important fact because the deceased was lying in a pool of blood. There was blood found on the foot-wear of the deceased but there was no blood found on the foot-wear of the Appellant. Therefore, this evidence of recovery of clothes and the footwear is not incriminating because of these reasons.

19 The prosecution had tried to bring on record the alleged quarrel between the Appellant and the deceased regarding a piece of land as a motive. However, the learned Judge himself has observed in Paragraph-36 of the impugned order that the motive put forth is not sufficient though he had relied on other circumstances. The evidence of motive is not proved by the prosecution beyond reasonable doubt.

20 Thus, the above discussion shows that the circumstances against the present Appellant are very weak and they do not form a complete chain ruling out hypothesis of innocence of the Appellant. Therefore, the Appellant deserves to be given benefit of doubt and hence he deserves to be acquitted.

21 Apart from the question of the Appellant's guilt, there is another important issue mentioned in the operative part of the impugned judgment, that is, about directions to the District Legal Aid Authority to pay compensation of Rs.1 Lakh to wife of the victim in accordance with the scheme under Section 357A of Cr.P.C. As per Section 357A of Cr.P.C. that decision has to be taken by the District Legal Services Authority as per the schemes. Hence, the

following order :

:: O R D E R ::

- i. The Appeal is allowed. The judgment and order dated 5.5.2017 passed by the learned Sessions Judge, Greater Mumbai in Sessions Case No.977/2015 is set aside. The Appellant is acquitted of the charge of commission of offence punishable under Section 302 of IPC.
- ii. The Appellant be released from jail, if not required in any other case.
- iii. The District Legal Services Authority shall consider grant of compensation, if any, in accordance with the schemes mentioned under Section 357A of Cr.PC. to PW-12, the wife of the deceased Ganesh.
- iv. Criminal Appeal is disposed of in aforesaid terms.

(SARANG V. KOTWAL, J.)

(SMT. SADHANA S. JADHAV, J.)

PRADIPKUMAR
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