

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1022 OF 2019

Raju Mallikaarjun Shinde

@ Rancho

... Appellant

Versus

The State of Maharashtra

... Respondent

.....
WITH
CRIMINAL APPLICATION NO.844 OF 2019
IN
CRIMINAL APPEAL NO.1022 OF 2019

....
Mr. Nikhilesh Pote, Appointed Advocate for the Appellant/Applicant.
Mr. S.S. Hulke, APP, for the Respondent-State.

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CORAM : S. S. SHINDE AND
SARANG V. KOTWAL, JJ.

DATED : 13th APRIL, 2022

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

1 The Appellant was the sole accused in Sessions Case No.61/2014 before the Additional Sessions Judge, Greater Bombay. At the conclusion of the trial, the Appellant was convicted for the offence punishable under Section 302 of the Indian Penal Code and was sentenced to suffer imprisonment for life and to pay a fine of

Rs.5,000/-; in default to suffer further imprisonment for a period of three months.

2 The prosecution case is that on 5.10.2013 at about 12.40 p.m., the Appellant inflicted blows with knife on one Prakash and ran away from the spot. This incident was seen by one Usman and one Tabrej. The injured Prakash also tried to run away from the spot but he was confronted by a police constable. Prakash told the incident and the Appellant's role in assaulting to the police constable. Prakash was taken to the hospital but he succumbed to his injuries. The police constable lodged this FIR. The investigation was carried out. The Appellant was arrested on the same day. At the conclusion of investigation, the charge-sheet was filed and the case was committed to the Court of Sessions.

3 During trial, the prosecution examined 15 witnesses. Most of them were related to the investigation. Two doctors were examined for the injuries suffered by the deceased Prakash. PW-9 Vishnu Kanhekar had conducted the test identification parade. The most important witness in this case are PW-4 Mohd. Usman. He was an eye witness. PW-7 Mohd. Tabrez also was an eye witness.

PW-5 was the police officer to whom the deceased had made his oral dying declaration. PW-5 had lodged the FIR. At the conclusion of the trial, the Appellant was convicted and sentenced as mentioned earlier.

4 Heard Shri Nikhilesh Pote, learned counsel appointed for the Appellant and Shri S.S. Hulke, learned APP for the State.

5 Learned counsel for the Appellant submitted that presence of the alleged eye witnesses at the spot at the time of incident is doubtful. Their evidence is not consistent and is not reliable. Their identification of the Appellant in the test identification parade is not proper. The recovery of knife and clothes is not properly proved as the pancha has turned hostile. There is no connecting C.A. reports concerning the alleged articles. The knife was recovered from an open space, which was accessible to all. Therefore, there is no corroborative piece of evidence. The evidence of the police officer, to whom allegedly Prakash had told the story, is not free from doubt.

6 As against these submissions, learned APP relied on the

very same circumstances to contend that the prosecution has proved its case beyond reasonable doubt. He submitted that the evidence of PW-4 and PW-7, as eye witnesses, does not suffer from any infirmity. The evidence of the police officer, to whom the dying declaration is made, is also sufficiently strong. There was no reason why either of these witnesses would depose falsely against the Appellant.

7 We have considered these submissions. The defence of the Appellant is of total denial. Learned trial Judge accepted the evidence of the prosecution and relying on the same convicted the Appellant.

8 As far as the evidence is concerned, before referring to the evidence of PW-4, PW-5 and PW-7, we may refer to the evidence of other witnesses in brief, as follows:

- PW-1 Mukesh Patil was a pancha for spot panchnama. The spot panchnama is produced on record at Exhibit-13. From the spot, blood stained earth was collected. Two buttons were also seized from the spot. The spot panchanam was

conducted between 6.45 p.m. to 7.45 p.m. on 5.10.2013.

- PW-2 Prakash Kure, was a pancha, in whose presence the clothes of the deceased were seized.
- PW-3 Namdeo Waghmare was the pancha for inquest panchnama.
- PW-10 Pravin Patil had taken the dead body to Rajawadi hospital for postmortem examination.
- PW-11 Sikander Inamdar was the pancha for recovery of weapon and clothes of the accused but he had turned hostile. The panchnama was produced at Exhibit-42 and it mentions that the clothes and the knife was kept below a pipe from a pipeline.
- PW-12 Tukaram Yadav had carried the articles to the Forensic Science Laboratory.
- PW-13 Surendranath Pandey, was a rickshaw driver, in whose rickshaw the injured Prakash was taken to Mahatma Phule Hospital. He has stated that two police havaldars had stopped

his vehicle and had asked him to take the injured to the hospital.

- PW-14 API Pramod Khatke was attached to Powai police station. He had recorded the Police Naik Baban Khade's report. The FIR is produced on record at Exhibit-22. He had carried out the first part of the investigation.
- PW-15 PI Mohd. Yakub Mulla had carried out the further investigation.
- PW-6 Dr. Shivaji Kachare was the medical officer who had conducted the postmortem examination. He had found four incised and stab wounds as follows :

- “a. Incised wound at left cheek size of 4 x 1 cm by muscle deep from below upwards, tapered at upward, reddish in colour.
- b. Stab wound at left anterior of chest at mid clavicular line, 10th inter costal space, one angle acute, semi circular, directed from above downwards, reddish in colour size of 1.5 cm x 0.8 cm x 3.00 cm deep.
- c. Stab wound at left hypoehordrial region,

oval shape one angle acute, reddish in colour directed from above downwards, size of 1.5 cm x 0.8 cm x 4 cm.

- e. Incised wound at T-10 vertebrae, posteriorly at vertebral column 1 cm x 0.2 cm x bone deep, reddish, one angle acute.”

Besides these injuries, there were six contused abrasions on different parts of the body. The internal injuries showed that there was deep penetrated wound with fracture of 10th rib. There was rupture of diaphragm. The walls and peritoneum were ruptured. There was rupture with large transverse colon hemorrhage. There was spleen rupture and there was left kidney rupture. The cause of death was hemorrhage and shock due to multiple injuries.

- PW-8 Dr. Hema Salve had seen the patient at about 1.45 p.m. on 5.10.2013 but he was already dead. She had seen injuries on the chin, chest and left forearm.

9 Thus, from the evidence of medical officers, it is clear that the deceased had suffered multiple wounds caused by the sharp weapon and majority of his internal organs were injured.

The deceased had died a homicidal death and was stabbed multiple times.

10 The next question, to be decided, is about the complicity of the present Appellant. For that purpose, as mentioned earlier, the prosecution has examined PW-4, PW-5 and PW-7. PW-4 Mohd. Usman and PW-7 Mohd. Tabrez were going towards Sakinaka at about 12.30 p.m. on 5.10.2013 in a rickshaw. When they reached Morarji Nagar Pipeline tunnel, they saw a quarrel. PW-4 saw that one boy was assaulting the other. The injured was named as Prakash by this witness. The assailant went away. The injured who had fallen down also ran towards the pipeline. While these witnesses were at the spot, the police came there. These witnesses gave their mobile numbers to the police. On the next day, they were called by the police and their statements were recorded. After a few days, they were called to attend the test identification parade at Arthur Road jail. According to this witness, he identified the accused at the identification parade. He has stated that the accused before the Court was the same person whom he had identified in the jail.

In the cross-examination, nothing much was deposed by him which would help the defence. He has stated that two persons at the identification parade were not similar to the Appellant. He denied the suggestion that the Appellant was shown by the police in the police custody.

11 PW-7 Mohd. Tabrez has given his evidence on exactly similar lines as that of PW-4. PW-7 Tabrez was knowing the deceased Prakash. He was from that same area and he was doing the labour work. PW-7 stated that the assailant assaulted Prakash on his face, chest and stomach. After the assault, the assailant went running towards Powai garden. Prakash himself got up and ran towards Morarji Nagar and he was caught by the police. He has also deposed about the identification parade which was held on 12.12.2013. He identified the Appellant at the identification parade. He was asked about details of the test identification parade, but, there again he has not deposed anything which would be helpful to the defence.

12 PW-9 Vishnu Kanhekar was the Naib Tehsildar. He has conducted the test identification parade on 12.12.2013 at Arthur

Road jail at about 11.00 a.m. He has deposed that the investigating officer had brought some persons. PW-9 selected two out of them to act as panchas. The two witnesses, PW-4 and PW-7, were present for the parade. He had enquired with the witnesses whether they were shown the photographs of the accused. They told PW-9 that they were not shown such photographs. Then he had described the procedure for conducting parade. He had selected six dummies who were resembling the accused. Both these witnesses, i.e. PW-4 & PW-7 identified the accused one after the other and they even described the incident that the identified accused had given blows of knife to the deceased.

In the cross-examination of PW-7, there was absolutely nothing which could help the defence. Only suggestions were put to him which he had denied.

13 Thus, we find that the evidence of PW-4 and PW-7 is absolutely consistent with each other. PW-7 was knowing the deceased. Both of them had described the incident in the same manner and in similar details. Their identification of the accused at the test identification parade is duly proved from the evidence of

PW-7 and the test identification parade panchnama produced at Exhibit-38. Considering this direct evidence, the prosecution has sufficiently proved the case against the Appellant.

14 In addition, the prosecution has also relied on the evidence of PW-5 Police Naik Baban Kale in respect of the oral dying declaration. He has stated that at about 11.30 a.m. to 11.45 a.m. near beat No.2 Chowky of Powai police station, 2-3 persons came and told him about the fight that was going on near Morarji Nagar pipeline. He along with his colleague went there. The injured person saw them and came near them and fell down. This witness made enquiries with the injured. He gave his name as Prakash. He disclosed that on account of money transactions, the Appellant had assaulted him on chest, stomach and cheek by knife. The injured had given name of the present Appellant. The injured was taken to Vikhroli Municipal Hospital but then his condition deteriorated and he was declared dead at the OPD in the hospital. This witness informed the police station. Police Inspector along with other police officials came to the hospital. PSI Khatke prepared the inquest panchnama. This witness came back to police

station and lodged the FIR which is produced on record at Exhibit-22.

15 It was argued that the injured may not be in a position to speak because shortly after he was taken to hospital he was declared dead. However the evidence shows that after the assault, the injured Prakash tried to run away and then came towards the police by himself. Therefore, if he could run, he could definitely tell his story to the police officers, therefore, there is no difficulty in accepting PW-5 Baban Kale's version that the deceased had described the incident by naming the accused to him. Therefore, even the oral dying declaration is proved by the prosecution.

16 The evidence of the investigating officer shows that the Appellant had criminal record and was convicted in two cases in the past. He was externed for one year and he has committed this offence when he was already externed from the area.

17 Apart from that, there is recovery of knife and clothes at the instance of the Appellant. However, the pancha had turned

hostile. The C.A. report does show the presence of 'O' blood group on the knife and on the clothes recovered at the instance of the accused. However, it is only a corroborative piece of evidence. Therefore, leaving aside this corroborative piece of evidence, even otherwise we are satisfied that the prosecution has proved its case through direct evidence of PW-4 Mohd. Usman and PW-7 Mohd. Tabrez. Their identification in the test identification parade is also duly proved by the prosecution. Their evidence is corroborated by the oral dying declaration given by the deceased to PW-5 Baban Kale which was recorded in the FIR itself.

18 Considering all this clear evidence against the Appellant, learned Judge has rightly convicted and sentenced the Appellant. We see no reason to take a different view. The prosecution has proved its case beyond reasonable doubt. The FIR was immediately lodged at 4 P.M. and it is mentioned in the proforma of the FIR that the police station was informed at about 1.10 p.m. i.e. soon after the incident which had taken place at 1.00 p.m. on 5.10.2013. Thus, there was no scope for manipulation and implicating the Appellant falsely.

19 In this view of the matter, we are satisfied that the prosecution has proved its case against the Appellant beyond reasonable doubt and, therefore, the Appeal is dismissed. It is made clear that the Appellant is entitled for the set off under Section 428 of Cr.P.C.; which is not mentioned in the operative part of the impugned judgment and order. The Appeal is disposed of. In view of disposal of Appeal, nothing survives in Criminal Application No.844/2019 and the same stands disposed of accordingly.

(SARANG V. KOTWAL, J.)

(S.S. SHINDE, J.)

Deshmane (PS)

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