

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 532 OF 2014

Munna Singh Rampal Singh @ Patel,)
 Aged about 28 years,)
 Residing at Hiren Apartment Compound,)
 Sherli Rajan Road,)
 Khar (West), Mumbai and)
 having native place at)
 Village Dhari, Post Kapshera,)
 Taluka Bara, District Alahabada,)
 Police Station : Shankargad,)
 Uttar Pradesh)
 At present undergoing the)
 sentence imposed upon him at)
 Nashik Road Central Prison.)

... Appellant
 (Original Accused)

V/s.

The State of Maharashtra)
 (at the instance of Senior Inspector of)
 Police Khar Police Station)
 vide C.R.No.486 of 2011))

... Respondent

Mrs. Pooja Bhojane-Sejpal for Appellant.
 Mrs. M. M. Deshmukh, APP for Respondent-State.

CORAM

: A.S. GADKARI AND
 SHIVKUMAR DIGE, JJ.

DATE OF RESERVING

: 16th JUNE, 2023.

DATE OF PRONOUNCEMENT : 4th AUGUST, 2023.

Judgment (Per Shivkumar Dige, J.) :

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1. The challenge in the present Appeal is to Judgment and Order dated 5th May 2014 passed in Sessions Case No.124 of 2012 by the Additional Sessions Judge, Greater Mumbai, whereby Appellant/accused is convicted for an offence punishable under Section 302 of the Indian Penal Code (for short "IPC") and directed to suffer Rigorous Imprisonment for life and to pay fine of Rs.1000/-. In default of payment of fine, to suffer further Rigorous Imprisonment for a period of six months.

2. The prosecution case is that, on 23rd October 2011, Shri. Vilas Bhabal, Assistant Sub-Inspector at Khar Police Station received information that, one person was lying in injured condition in Metropolitan Building, Nargis Dutt Road, Mumbai. After receiving information, he reached the spot where he noticed, one person was lying in parking place of that building in unconscious condition having bleeding injuries. The injured person was taken to Bhabha Hospital. Upon examination, Doctor declared him dead. Shri Vilas Bhabal made inquiry with Shri Brijlal Benbans (PW-1), watchman of Metropolitan Building. As per the statement of Shri Brijlal, the injured was assaulted by Appellant - Munnasingh @ Patel with knife and ran away from the gate of building. On the basis of the statement of Shri Brijlal, police registered FIR under Section 302 of the IPC against the Appellant. Consequent to registration of the FIR, investigation was carried out by Investigating Officer. Appellant was arrested. On his disclosure statement under Section 27 of the Indian Evidence Act, his blood

stained clothes and knife used in the offence were seized by the police in presence of panchas by preparing panchanama.

3. After completion of investigation, charge-sheet was filed against Appellant. The case was committed to the Sessions Court at Greater Mumbai. Upon committal of case, charge for the above stated offence was framed against Appellant. Appellant pleaded not guilty and claimed to be tried.

4. The prosecution examined 12 witnesses in support of its case, none was examined on behalf of Appellant. The statement of Appellant under Section 313 of Criminal Procedure Code was recorded. The defense of Appellant was of total denial. Considering the evidence on record and submissions of learned Advocates, the Trial Court has convicted Appellant as mentioned above.

5. It is the contention of Mrs. Bhojane-Sejpal learned counsel for Appellant that, from the evidence produced on record, guilt of Appellant is not established beyond reasonable doubt, but this fact is not considered by the Trial Court. The Trial Court has erroneously held that, the offence is committed by Appellant. Learned counsel further submits that, no evidence is produced on record to show that Appellant had assaulted the deceased with knife. Moreover, the weapon used in the crime was recovered from the kitchen platform of one flat, the door of which was unlocked. The said recovery was made after three days of the incident. The Trial Court has also admitted that, the said recovery of weapon is not

trustworthy. In spite of that, Appellant is convicted. Learned counsel further submits that, the prosecution failed to establish motive behind the crime and failed to establish the chain of links. In alternative, learned counsel submits that, at the most, it can be considered that the act of Appellant was culpable homicide not amounting to murder as the incident happened due to sudden quarrel between deceased and Appellant.

6. It is the contention of Mrs. M. M.Deshmukh, learned APP that, the prosecution has proved the case beyond reasonable doubt. The incident happened in the presence of PW-1 Brijlal Benbans, who was present there. He had seen the quarrel between Appellant and deceased. Thereafter, Appellant and deceased both went towards the parking area. After some time, PW-1 Brijlal heard screams of the deceased. When PW1-Brijlal went there, he saw that deceased was holding his hand on stomach and Appellant was running towards the gate of the building. It proves that Appellant had assaulted the deceased.

Learned APP further submitted that, the motive behind the crime was that, PW-9 Rajani Lakada, earlier had love affair with Appellant. Thereafter, due to behaviour of Appellant, she stopped talking with Appellant and had love affair with deceased, due to which Appellant was unhappy. On the day of incident, deceased and PW-9 had gone to the house of deceased and after returning from the house, the incident happened. Appellant killed deceased, as he was an obstacle in his love affair.

7. We have heard both learned counsel, perused Judgment and Order passed by the Trial Court.

8. Prosecution case is of circumstantial evidence. It is settled principle of law that, in the case of circumstantial evidence, the prosecution has to complete the chain of incidents. The prosecution led evidence to establish three major links in the chain of circumstances i.e. motive, last seen together and recovery of weapon of assault from Appellant.

9. The prosecution case is based on the statement of PW1-Brijlal Benbans at 'Exhibit-10' who witnessed the incident. He has stated that, at the time of incident, he was working as a watchman in the Metropolitan Building at Pali Hill, Mumbai. He knew Rajani Lakada, PW-9 who was working as maid in the house of Mr. Chopra. He knew deceased - Mansoor Ahmed@ Sonu. He worked as a driver in the house of Mr. Chopra. He knew Appellant as he was previously working as a watchmen in the said building. This witness further stated that, on 23rd October 2011, he came to duty at about 8.15 to 8.30 p.m.. He saw Rajni Lakada (PW-9) proceeding to the house of Mr. Chopra. After 2-3 minutes, deceased came there in auto rikshaw. After the auto rikshaw left, Appellant came there. Deceased and Appellant started to talk. This witness was at a distance of about 50 meters from them. He did not hear what they were talking. While talking to each other, Appellant and deceased went behind a Prado vehicle parked there. After that, this witness heard a loud cry from the direction of a Prado vehicle. He immediately ran towards the source of cry. He found

that deceased was standing there holding his stomach. He asked him what happened but deceased did not answer. He started to walk backwards and then fell down in a corner. This witness saw on all sides and found Appellant running away. He called Appellant by asking him to stop but he did not stop. This witness informed the incident to Mr. Malhotra, Secretary of the Housing Society. Thereafter, police came at the spot and carried deceased in the vehicle. Police inquired with this witness about the incident. He narrated to police the facts known to him.

10. Learned APP sought permission of the Trial Court to cross-examine this witness as he resiled from his earlier statement. Permission was granted. This witness denied suggestion that, he saw Appellant stabbing deceased by knife. In cross-examination by learned counsel for Appellant, this witness admitted that Appellant and deceased were talking by keeping their hands on each other's shoulders. He further admitted that, there were many vehicles parked at the place where deceased was found in injured condition. He did not inform the police that, he saw Appellant inflicting knife blow to deceased. To corroborate the evidence of this witness, prosecution has examined PW-5 - Chetnarayan Pandey, who was working as a watchman in Metropolitan building. It is prosecution's case that on the day of incident, this witness, witnessed the incident along with PW-1 Brijlal but, this witness did not support prosecution case nor anything elicited in his cross-examination by learned APP.

11. From the evidence of PW-1, it reveals that there was quarrel between deceased and Appellant before the incident and they went towards the parking place while quarreling. It is the prosecution case that, while giving statement before the police, this witness has stated that, he had seen Appellant assaulting the deceased with knife but before the Trial Court while giving evidence, this witness has stated that he only saw Appellant and deceased were quarreling. From the evidence of this witness it is proved that, deceased was last seen together with Appellant, no other person was present there except Appellant and deceased. This witness is an independent witness who was working as a watchman in the building where the incident happened. Considering the evidence of this witness, in our view, the prosecution has proved the point of last seen together i.e. Appellant and deceased.

12. In respect of point of motive, it is contention of APP that, earlier Appellant had love affair with PW-9 Rajani , thereafter she had love affair with deceased which was not liked by Appellant, hence he murdered deceased. To prove this fact, the prosecution has examined PW-9 Rajani Lakada at 'Exhibit-28'. She has stated that, she used to go for cleaning work in the house of Nimmi Chopda in Metropolitan Apartment. This witness used to make phone calls at her native place. Appellant used to raise doubt about it and used to quarrel with her and assault her. So she had stopped talking with him. Thereafter, Appellant started to threaten her. Appellant was removed from his work by the society, still he continued to threaten

this witness, whenever he would come across her on the way at the bazaar and market. This witness further stated that, she knew deceased Mansuri Mohd. @ Sonu as he was driver on the vehicle of Nimmi Chopda. This witness used to handover key of the vehicle to deceased in the morning and take it back in the evening. Deceased had asked this witness, if she is ready, he would marry her. She had replied yes to him. Deceased was staying at Powai. On the date of incident i.e. on 23rd October 2011, this witness had been to Powai with deceased. This witness came to Metropolitan Apartment around 8.00 pm in auto rikshaw. When this witness got down at the gate of Metropolitan Apartment, she noticed Appellant on the gate of Metropolitan Apartment. He caught hold hand of this witness and attempted to press her throat with her duppatta. This witness succeeded to escape from his clutches and rushed to Metropolitan Apartment. Appellant chased her. Deceased was present in that building. This witness told deceased that Appellant is chasing her. Thereafter, this witness went to 3rd floor of that building. She heard shouts of quarrel between deceased and Appellant, so she came down. She noticed that Appellant inflicted blow of knife on stomach of deceased, when he was near the vehicle parking place. She noticed deceased in pool of blood. Watchmen Pandey and Brijlal were present on the spot. In the enquiry, watchman told her that, Appellant killed deceased and ran away from the place along with knife. This witness further stated that, the police reached at the incident within five minutes. They carried deceased to Hospital.

This witness stated that, Appellant assaulted deceased because deceased desired to marry her and this witness had refused to have any contact with Appellant. Hence, he was annoyed. In cross-examination, this witness admitted that, she personally did not see Appellant inflicting blow of knife in the stomach of deceased when he was near parking place and she did not see Appellant escaping along with knife.

13. From the evidence of PW-9, it reveals that, when she reached Metropolitan Apartment, Appellant tried to press her throat with her duppatta which was on her person but no other witness is supporting her version. PW-1 Brijlal Benbans chronicles events happened on the fateful day, that initially PW-9 Rajani Lakada came to the Metropolitan Apartment, thereafter deceased came to the Apartment in auto rickshaw and thereafter, Appellant came there. Though PW-9 has stated about love affair with Appellant and deceased, no evidence is produced in that regard to prove that, because of love affair between deceased and PW-9, Appellant was annoyed and he killed deceased. Moreover, we find that evidence of PW-9 is not reliable as she has stated that, Appellant tried to throttle her with duppatta but PW-1 is not supporting her evidence. She stated that, she had seen Appellant knifed the deceased on his stomach but in cross-examination, she admits that she had not seen the incident. Considering evidence on record, we are of the view that prosecution failed to establish motive behind the crime.

14. It is contention of learned APP that, as per disclosure statement of Appellant, knife used in crime was seized by police. It proves involvement of Appellant in the crime. To prove recovery of weapon, prosecution has examined PW-8 Vishwanath Sawant at 'Exhibit-23'. He has stated that, on 23rd October 2011, police called him. He went with police at Metropolitan society at 10.00 pm. The police prepared spot panchanama in his presence. Again on next date ie. 24th October 2011, police called him in Khar Police Station. In his presence, the Police seized the clothes of deceased. The panchanama is at 'Exhibit-25'. Thereafter, on 27th October 2011, this witness was called at Khar Police Station at about 11.15 to 11.30 a.m.. Appellant was present in police station. His identity was explained to this witness. Appellant disclosed in presence of this witness that, he would show the place where he kept the clothes which were on his person at the time of incident and articles hidden by him at his residential home. His statement was written and it was signed by this witness, other panch and police officer. It is at 'Exhibit-26'. Thereafter, this witness, other panch and police boarded in vehicle and went as per the instructions of Appellant at C. D. Marg, Khar Danda Pada, Carter Road, Rajan Sharli village. Police asked to stop the vehicle. They all got down from the vehicle. Appellant took them to Hiten Society. They noticed one room on ground. Appellant went inside the room. Others followed him. Appellant produced 'suri', it was found rolled in a paper. It had red color handle. It was on kitchen platform. The police took the 'suri' in custody. They noticed smeared blood

on suri blade. The handle of the suri's length was about 3 and half inch and blade 4 inch. It was labeled and signed by this panch. Appellant produced cloths from a plastic bag. It was hanged on hanger on the wall of the same room. Appellant took out bag and produced white color Levis company shirt and blue color jeans pant. The clothes were smeared with blood. The police seized the clothes and took the same in custody. Accordingly discovery panchanama was done. This witness and other panch and police officer signed on it. It is part of 'Exhibit-26'. This witness identified seized clothes and suri i.e. 'Article-1'.

In cross-examination, this witness admitted that, he worked as a panch in cases of 3-4 police stations and he had acted as a witness in 25-30 panchanamas. He further admitted that, he was acting as panch witness since 10 years and had given evidence in near about 30 sessions cases. This witness further admitted that, on 27th October 2011 the police officer told him that they were going to recover article/weapon used in commission of crime. It was told by Mr. Kale, Investigating Officer. This witness do not recollect the vehicle, in which, they travelled. He further admitted that, the room in Hiten Apartment was already open and, in presence of this witness, the police did not make enquiry with the neighbours as to who was occupying the said room. Even after the panchanama, the said room was left open. There were many occupants in that apartment. He admitted that, the knife was in paper wrapper on kitchen platform and this knife was not having any specific identity mark.

From the evidence of this witness, prosecution has tried to prove recovery of the weapon in the offence committed by Appellant but from evidence of this witness, particularly admissions given in cross-examination, it shows that seizure of weapon was a farce, as before entering the room from where the said weapon was recovered, the police did not make enquiry whether the said room belonged to Appellant or not. Moreover, Appellant was arrested by the police on 23rd October 2011 but recovery of weapon was done on 27th October 2011. The Trial Court has also not believed on recovery of the weapon used in the offence.

15. PW-12 Sanjay Kale, Investigating Officer, examined at 'Exhibit-38', he has stated that, he received investigation of crime and he arrested Appellant. In presence of panchas, Appellant made disclosure statement that, he would produce the weapon i.e. knife and place where he had hidden it. In presence of panch witness, knife was seized as per the disclosure statement of Appellant.

While recording evidence of this witness, the Trial Court has observed that, this witness has stated these facts after putting digging questions to him and APP was permitted to put leading questions. The Trial Court has observed that, considering the approach and behaviour of the witness, the prosecutor shall inform to the superior authority of it so that at least this officer would not be allowed for further investigation of such serious matters. From the evidence of PW-8 and this witness, it reveals the panchanama of recovery of weapon was farce and it was not made properly.

Considering evidence on record, in our view, the prosecution failed to prove the recovery of weapon used by Appellant in crime.

16. There is no dispute about homicidal death of deceased, as death was caused due to multiple stab injuries. PW-6 Dr. Pankaj Gajare has stated that, he conducted postmortem on the dead body of deceased. The cause of death was "shock due to multiple stab injuries". Postmortem report is at "Exhibit-21". This witness further stated that, injury Nos.1 and 2 mentioned in column No.17 would be a cause of death of deceased. These injuries are possible by sharp pointed weapon like knife. Article No.1-knife was shown to this witness, he stated that by this weapon these injuries are possible.

In cross-examination, this witness admitted that, if patient would have been immediately treated, all the three injuries were curable. The injury Nos.1 and 2 might have caused by one weapon and injury No.3 by different weapon. This witness further admitted that, injury No.3 could be possible, if a person falls on ground. Injury No.1 could cause if a person was lying on the ground.

Court question was put to this witness, he stated injury No.1 was possible when a person is in a standing position. This witness further admitted that, stab injury was possible if a person falls on sharp object. The patient might have died due to heavy blood loss because of haemorrhage shock. From the evidence of this witness, it reveals that there were three injuries on the stomach of the deceased. It is significant to note that, this witness has stated that injury Nos.1 and 2 might have caused by one

weapon and injury No.3 by different weapon. This witness further admitted that, injury No.3 could be possible if person falls on ground and injury No.1 could cause if a person was lying on the ground. As observed earlier, prosecution has not proved the recovery of weapon with cogent evidence. In our view, prosecution failed to prove, which injury was caused to deceased by weapon and which without weapon as no one has seen the incident of stabbing by Appellant to the deceased. Moreover, PW-6 admitted that if deceased had got medical treatment in time, he would have survived.

17. Now question remains whether Appellant is responsible for murder of deceased. In our view, PW-1 has categorically stated that, he had seen Appellant and deceased while quarreling. Thereafter, they went towards the parking area. After hearing cry, PW-1 went towards the parking area where he saw that deceased was holding his hand on his stomach and Appellant was running towards the gate of the building. It shows that, there was nexus between quarrel of Appellant and deceased and injuries caused to the deceased. It is contention of learned APP that, the said assault was intentional, there was a motive and there was preparation of the assault by Appellant. Whereas it is the contention of learned counsel for Appellant that, the said incident happened due to quarrel between Appellant and deceased.

18. It appears from the evidence on record that, there was sudden quarrel between Appellant and deceased over the motive propounded by

the prosecution. No evidence came on record to show that, there was previous rivalry between Appellant and deceased. The incident took place at the spur of moment. Prosecution has not proved that knife used in offence was same which was recovered from Appellant's house as per his disclosure statement. The forensic report at "Exhibit-45" shows that, blood stains found on cloths of Appellant, deceased and knife are inconclusive. PW-6 Doctor who conducted postmortem of dead body has stated that injuries were caused by two different weapons and some injuries may have caused due to fall on ground. Prosecution failed to prove motive behind crime. The Hon'ble Apex Court in the case of *Ramanand alias Nandlal Bharti v. State of Uttar Pradesh reported in 2021 (5) ALJ 104* has observed that in a case based on circumstantial evidence, motive for committing the crime on the part of the accused assumes greater importance. This Court in various decisions has laid down the principles holding that motive for commission of offence no doubt assumes greater importance in cases resting on circumstantial evidence than those in which direct evidence regarding commission of offence is available. It is equally true that failure to prove motive in cases resting on circumstantial evidence is not fatal by itself. However, it is also well settled and it is trite in law that absence of motive could be a missing link of incriminating circumstances, but once the prosecution has established the other incriminating circumstances to its entirety, absence of motive will not give any benefit to the accused.

19. Considering evidence on record, in our view, present case comes under Exception 4 of Section 300 of IPC. The Hon'ble Apex Court in the case of *Pardeshiram versus State of Madhya Pradesh reported in (2021) 3 SCC 238* has observed that :

"The cause of provocation was sudden, without premeditation. We find that, in the facts and circumstances, it is a case falling under Exception 4 of Section 300 IPC. The injuries were inflicted without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken advantage or acted cruelly or unusually. In this view of the matter, we find that the appellant is liable to be convicted for an offence under Section 304 Part I IPC".

In present case, the incident happened at the spur of moment and due to sudden quarrel, there was no premeditation, hence, Appellant is liable to be convicted for an offence under Section 304 (Part I) of the IPC.

20. In view of above mentioned reasons, we pass following order :

1. Appeal is partly allowed.
2. Appellant is convicted for the offence punishable under Section 304(Part-I) of IPC. He shall suffer rigorous imprisonment for 10 years and to pay fine of Rs.1,000/-, in default of payment of fine to further suffer rigorous imprisonment for six months.
3. Appellant shall be released from jail on completion of sentence as directed, unless required in any other case/cases.

21. In view of disposal of Criminal Appeal, Interim Application No.516 of 2020 does not survive and is also disposed off.

(SHIVKUMAR DIGE, J.)

(A.S. GADKARI, J.)