

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1225 OF 2022

Fulkunda @ Suresh Ranganna Wadde	)	
Age 33 years, Occu : Nil,	)	
R/o, Devgad, Taluka : Adhuni, Andhra Pradesh,	)	
Convict No. C 16586, Yerwada Centra Prison,	)	
Pune.	)	.. Appellant
V/s.		
State of Maharashtra	)	
Through Devu Road Police Station	)	
FIR No. 32/2008.	)	.. Respondent

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- Ms.Farhana Shah, Appointed Advocate for the Appellant.
 - Mrs. G. P. Mulekar, APP for Respondent-State.
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**CORAM : A. S. GADKARI AND
SHIVKUMAR DIGE, JJ.**

RESERVED ON : 25 JULY 2023

PRONOUNCED ON : 26 SEPTEMBER 2023

JUDGMENT (Per : Shivkumar Dige, J.) :-

1. Appellant (original accused) has impugned Judgment and Order dated 19.01.2013 passed by the Additional Sessions Judge, Pune, whereby Appellant is convicted for the offence

punishable under Section 302 of Indian Penal Code, 1860 (for short “IPC”) and is sentenced to suffer life imprisonment and to pay fine of Rs.1,000/- (Rupees One Thousand only), in default of payment of fine, to suffer further rigorous imprisonment for one month.

2. The brief facts of the case are as under :

2.1. First Informant, PW-1 Mohan Pilley is the brother of deceased Raja. On 04.02.2008, at about 4:30 p.m., Mohan and Raja went towards water tank situated nearby their house, there they met friends of Raja, Suresh Paul, Arun Avinash Pol and Pravin Pogle. Meanwhile, his cousin Sohan came there. When they all were chitchatting, at that time, Appellant and deceased, Amir @ Kunya came there on blue colour scooter bearing No. MH-14/R-2154. Kunya had worn blue colour full T-shirt and blue jeans. Appellant and Kunya asked Raja to accompany them. At that time, PW-1 told them, Raja wanted to visit the house of his grandmother and they should not take him anywhere. They told to PW-1 that, they would come back within five minutes. Raja also told them that, he wanted to go to the house of his grandmother, but they insisted Raja to accompany with them. Then Raja went along with Appellant and Kunya on their scooter. Raja sat in between Kunya and Appellant, they went towards Dehuroad bazar.

2.2. Thereafter, about 30 to 45 minutes friend of PW-1, Santosh Thorat came to the house of PW-1 and told that, Raja was assaulted. After hearing it PW-1 went to Sitlanagar on the motorcycle of Santosh. On reaching at the incident spot, PW-1 came to know that, Raja was taken to Cantonment Hospital, Dehuroad. He also came to know that, person wearing blue T-shirt and person accompanying him, assaulted Raja by wooden log on his face and head. The said persons ran away on the scooter towards Dehuroad. PW-1 and Santosh went to Cantonment Hospital, there PW-1 came to know that, Raja was declared dead. Thereafter PW-1 lodged complaint against Appellant and Kunya.

2.3. Prior to lodging of FIR, Dehuroad Police had received information that, one person was lying in the injured condition in front of Sitladevi temple, hence Investigating Officer- Mr. Jagannath Patil rushed to the spot and found injured lying there. He also saw wooden log stained with blood lying there. He immediately sent injured to Cantonment Hospital, where Medial Officer examined him and declared dead.

2.4. Investigating Officer came back to Dehuroad Police Station where PW-1 was present who lodged complaint. During the

course of investigation, Police arrested Appellant and Kunya. After completion of investigation chargesheet was filed.

2.5. The case was committed to the Additional Sessions Court, Pune. During the pendency of trial, accused Kunya @ Amir Gous passed away. The charge was framed against the Appellant. He pleaded not guilty and claimed to be tried. To prove its case, Prosecution has examined 13 witnesses. The statement of Appellant under Section 313 of Code of Criminal Procedure, 1973 (for short "Cr.P.C.") was recorded. The defence of Appellant is of total denial.

3. Considering the evidence on record and submissions made on behalf of both the learned Advocates, learned Trial Court by its impugned Judgment and Order convicted Appellant as referred above.

4. We have heard submissions of both the learned Counsels. Perused record, and Judgment and Order passed by the learned trial Court.

5. There is no dispute about the homicidal death of deceased. PW-8 Dr. Madhav Waghmare, who conducted postmortem on the dead body of Raja has stated that, on examination of dead body, he noticed following external injuries :

- (1) Contusion with lacerated wound on frontal scalp region having size of 2 X 2 cms, bone deep;*
- (2) CLW on left eye-brow region, having size of 1, ½ X ½ X bone deep;*
- (3) Contusion of right cheek to chin region, having size of 4 X 3 cms;*
- (4) CLW on upper and lower lip region having size of 2 X ½ X ½ cms, caused by incision of tooth, four upper and two lower teeth were fallen;*
- (5) Contusion on left tempo region to above ear region, having size of 2 X 2 cms;*
- (6) There was fracture of skull invading frontal, parietal, right temporal and occipital bone.*

He opined that, above injuries were ante-mortem and could have caused within 19 hours prior to the postmortem. The cause of death was shock and hemorrhage due to grievous injuries to vital organs with fracture to skull invading right-left frontal parietal, temporal, occipital bone with laceration to brain. He opined that, the injuries sustained to deceased were sufficient to cause his death in ordinary course of nature. In cross examination, it was suggested to him that, the injuries sustained to deceased could be possible due to fall from moving vehicle which he denied.

This witness stated that, injury Nos. 2, 4 could be possible, if person falls on stone. This witness admitted that, the weapon of assault was not shown to him by Police. The defence has not disputed homicidal death of deceased.

6. Prosecution's case is based on circumstantial evidence and direct evidence. It is the case of prosecution that, Appellant and Kunya had taken the deceased with them and it was seen by PW-1 Mohan and PW-7 Parvati Babu. The incident of assault on deceased by Appellant and Kunya was witnessed by PW-5 Vaibhav Chougule and PW-6 Kali Kuppuswami.

7. Firstly, we would see the evidence regarding last seen. To prove the case of last seen, prosecution has examined First Informant, PW-1 Mohan and PW-7 Parvati Babu.

7.1. PW-1 Mohan has stated that, he knew Appellant and Kunya as they were friends of Raja. On 04.02.2008 at about 4 p.m., he along with Raja went near water tank. When they reached there, Suresh Paul, Arun Pol and Pravin Pokle were already present there. After about 10-15 minutes, Sohan joined them. After about half an hour, Appellant and Kunya came there on blue colour scooter bearing No. MH-14-R/2154. Kunya was wearing blue colour T-shirt and blue jeans. Appellant had worn blue colour T-shirt and blue

jeans. His brother Raja was to meet his grandmother, Appellant and Kunya asked Raja to accompany them and also told that, they will return within five minutes. This witness told them not to take Raja along with them as Raja wanted to meet his grandmother but they told this witness that, they will return back within five minutes. Raja had also refused to accompany them but they insisted him, hence he went along with them. Appellant was riding the scooter. Raja sat in between Appellant and Kunya, scooter went towards the market. Thereafter, about 30 to 45 minutes, Santosh Thorat came to this witness and told that, Raja was assaulted. This witness went along with Santosh on his motorcycle at Shitla Nagar at the incident spot. He saw bloodstains on the spot. There he came to know that, Raja was taken to Cantonment Hospital, he rushed there. There he came to know that, two persons who had come on blue scooter, assaulted Raja by wooden log. On reaching hospital, this witness came to know that, Raja was declared dead. He filed complaint against Appellant and Kunya. The complaint is at Exhibit-33. This witness identified the clothes of Appellant and Kunya and Raja. These are at Articles 7, 9, 13, 14, 15, 17.

7.2. In cross examination, this witness has stated that, he had described in complaint about the clothes worn by Appellant but

he cannot assign any reason why the description of clothes of Appellant is not mentioned in the complaint. It is also not mentioned in the complaint that, both accused had asked Raja to accompany them. This witness admitted that, Raja was facing criminal cases. This witness denied the suggestion that, Raja was killed by his enemies and not by Appellant and Kunya and Appellant has been falsely implicated in this case. From the evidence of this witness it reveals that, he lodged complaint immediately after death of his brother and in the said complaint, he has given details of happened incident. In the said complaint, it is also mentioned that, how Appellant and Kunya came to his house and taken away Raja with them.

8. The last seen evidence of PW-1, is corroborated by PW-7 Parvati Babu. She has stated that, in the year 2008, she was having scooter bearing registration No. MH-14/R-2154, she used to send her scooter for servicing and repairs to workshop of Kunya and Appellant. She knew Raja. On 04.02.2008, at about 4:30 p.m. Raja, Appellant and Kunya had come to her house to solve their dispute. Appellant and Kunya told this witness that, Raja used to demand money from them. This witness told them that, she had lost her father, therefore, asked them to come later on and she would solve

their dispute. Thereafter, they all three went away. This witness identified Appellant present before the Court.

8.1. In cross examination, this witness has stated that, she does not know the name of the garage of Appellant. She does not have any receipt to show that, she had given her scooter to workshop of Appellant. From the evidence of this witness it reveals that, on the day of incident, at about 4:30 p.m. Raja was in company of Appellant and Kunya. Appellant and Kunya were angry on Raja due to his behaviour. Though this witness in cross examination stated that, she does not know name of garage of Appellant and she does not have receipt to show that, scooter was given for repair in workshop of Appellant but Appellant has not denied ownership of scooter of this witness. In cross examination no question was put up to this witness regarding ownership of scooter. Appellant has not given any explanation how said scooter came in his possession. While committing crime Appellant and Kunya used scooter of this witness. It appears from the record that, after leaving house of this witness, there was anger in the mind of Appellant and Kunya against Raja. Then they assaulted him with wooden logs.

9. To strengthen its case, prosecution has relied on the evidence of eye witness PW-5 Vaibhav Chougule and PW-6 Kali Kuppuswami.

PW-5 Vaibhav has stated that, he and his father runs a shop at Sitla Nagar. On 04.02.2008 at about 5:00 p.m., there was rush in his shop. He heard commotion of quarrel hence he saw that, one person assaulted another by wooden plank on his head and face. Thereafter, the person who assaulted ran away.

In cross examination, this witness admitted that, due to rush of customers, he could not see the alleged incident properly. Evidence of this witness appears to be not reliable as he has not seen the incident properly due to rush of customers.

10. PW-6 Kali Kuppuswami, other eye witness has stated that, he knew Raja, Kunya and Appellant. He identified Appellant present before the Court. He further stated that, on 04.02.2008, at about 5:00 p.m., he was standing near Sitladevi Chouk, Dehuroad. He saw Raja along with Appellant and Kunya. Appellant assaulted Raja with wooden plank on his head, Kunya also assaulted him. Raja fell down on road, thereafter, both accused ran away on their blue coloured scooter.

In cross examination, this witness stated that, he was serving in Force Motors as a sweeper. His work place was at Akurdi and duty hours were 7:00 a.m. to 3:30 p.m. He admitted that, deceased Raja was from his native place and he had close relation with Raja. He saw incident from the distance of 100 ft. This witness admitted that, scene of offence was place of heavy rush of people. From the evidence of this witness it establishes that, this witness was present near the incident spot and he had seen the incident from the distance of 100 ft. This witness was knowing Raja, Appellant and Kunya, so it cannot be said that, identification parade of accused was not taken to identify them.

11. To prove the seizure of articles, the prosecution has relied on evidence of PW-2 Abu Murti and PW-11 Sunil Walmiki. In presence of PW-2 Abu Murti Police prepared spot panchanama and seized two wooden logs from the spot. The spot panchanama is at Exhibit-35. In cross examination, nothing came on record to disbelieve his evidence. In presence of PW-11, Police seized blood stained clothes worn by Appellant and Kunya at the time of incidence by a panchanama (Exhibit-58). This witness identified Appellant present before Court and the clothes of Appellant which are at Article Nos. 15,16 and 17. In presence of this witness on

disclosure statement of Kunya Police seized scooter uses in crime. In cross examination this witness stated that, he does not remember the date of panchanama. This witness admitted that, the accused who gave voluntary statement is not present in Court. This witness admitted that, he was residing near the house of Raja.

11.1. It has come in the evidence of PW-13 Jagannath Patil, Investigating Officer that, he took injured to hospital, seized two wooden logs lying on incident spot. Seized clothes of Appellant and Kunya, in presence of panch witness and seized scooter as per disclose statement of Kunya. He sent muddemal articles to C.A.

11.2. The prosecution has examined PW-3 Munna Kashid, eye witness and panch witness PW-4 Arun Avghade, eye witness PW-9 Santosh Thorat, who informed PW-1 Mohan about the incident but these witnesses have not supported the case of prosecution. Nothing elicited in their cross examination taken by learned APP. PW-10 Vandana Bhujbal and PW-12 Shakil Shaikh have stated that, they had delivered seized articles to Chemical Analyser. The Chemical Analyser's report is at Exhibit-77. This report shows that, human blood stains found on clothes of Appellant and Kunya and seized two wooden logs.

12. From the evidence of prosecution witnesses, it proves that, Appellant and Kunya had taken Raja with them on scooter. It was seen by PW-1 Mohan. Thereafter, at about 4:30 p.m. both accused and Raja had gone to the house of PW-7 Parvati Babu to solve their dispute. Thereafter, the incident of assault on Raja by Appellant and Kunya witnessed by PW-6 Kali Kuppuswami. He had specifically stated that, Appellant and Kunya assaulted Raja with wooden plank and ran away from the spot on blue colour scooter. PW-7 in her evidence stated that, she had given her scooter No. MH-14/R-2154 to workshop of Kunya and Appellant for servicing and repairs. The said scooter was seized as per the statement of Kunya. It is the contention of learned Counsel for the Appellant that, there was no role of Appellant in the said crime. Deceased accused Kunya had assaulted Raja with wooden plank. It is duly established that, the death of Raja is homicidal. Raja was in company of Appellant and therefore it was incumbent upon Appellant to explain, when he parted with the company of Raja. No explanation was given by Appellant in his statement under Section 313 of Cr.P.C. nor any evidence is produced to show that, he had parted with the company of Raja at the relevant time. It proves that, Appellant is responsible for the death of Raja.

13. It is contention of learned Counsel for the Appellant that, the act of Appellant would fall under Section 304 (Part-I) or (Part-II) and not under Section 302 of I.P.C. From the evidence produced on record it establishes that, Appellant and Kunya had planed to kill Raja. They had taken him from his house and within one hour they killed him. It proves that, the said act was premeditated with intention to cause the death of Raja. We do not see merit in the contention that, the act of Appellant would fall within the purview of Section 304(Part-I) or (Part-II) of I.P.C.

There are no merits in the Appeal and is accordingly dismissed.

14. In view of the above, we pass the following Order :

- i. Appeal is dismissed.
- ii. In view of disposal of the Appeal, Interim Application No.3254 of 2022 pending therein, do not survive and is accordingly disposed off.

(SHIVKUMAR DIGE, J.)

(A.S. GADKARI, J.)