



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

CRIMINAL APPEAL NO. 343 OF 2019

Devidas @ Manna @ Manoj Gorakh Pakhare,
Age : 25 years, Occu : Nil,
R/o. Nagardewle, Tq. and Dist. Ahmednagar
At Present Convict No. C/17645,
Central Prison, Yerwada, Pune

...Appellant

Versus

The State of Maharashtra

...Respondent

.....

Shri. S. S. Kazi, Advocate for the Appellant
Smt. V. S. Chaudhari, APP for the Respondent / State.

.....

CORAM : R. G. AVACHAT AND
NEERAJ P. DHOTE, JJ.

Dated : January 04, 2024

JUDGMENT [Per Neeraj P Dhote, J.] : -

1. Heard the learned advocate Shri. S. S. Kazi for the Appellant and the learned APP Smt. V. S. Chaudhari for the Respondent / State.

2. Challenge in the appeal is to the conviction of the Appellant / accused no.1 for the offence punishable under Section 302 of the Indian Penal Code (in short, 'I.P.C.') and sentencing him to undergo Rigorous Imprisonment for life and fine of Rs.10,000/-, in default to undergo Rigorous Imprisonment for one year, by the learned Additional

Sessions Judge, Ahmednagar in Session Case No.125 of 2015 arising out of Crime No. 07/2015 registered with Bhingar Camp Police Station, Tq. and Dist. Ahmednagar.

3. The prosecution's case as revealed from the police report is as under:

3.1. The informant is the brother of deceased Sandeep Ramlal Bhingardive and Deoram Ramlal Bhingardive. He is the resident of Nagardewle, Ambedkar Nagar, Rajwada, Tal. and Dist. Ahmednagar. In the evening of 15.01.2015 at around 05:30 p.m. verbal altercation took place between Deoram and the Appellant (accused no.1). Thereafter, at around 08:30 p.m. when deceased Sandeep was sitting in front of the Samaj Mandir, the Appellant came near him and said that his brother Deoram quarreled with him and he started quarreling and assaulting Sandeep. The witnesses Sanjay Suresh Jadhav and Ashok Karbhari Jadhav intervened. The co-accused (acquitted), who are the relatives of the Appellant, came and caught hold of Sandeep and the Appellant removed the knife from his waist and inflicted blows on Sandeep. Due to assault by the Appellant, Sandeep got severely injured and fell down. He was taken to the hospital by the witnesses, however, the Doctor declared him dead. As the incident was reported to the police, the aforesaid crime came to be registered against the Appellant and the co-accused.

4. The police conducted the investigation, during which they conducted the inquest, got the post-mortem done, arrested the Appellant and the co-accused, seized the clothes of the accused and deceased, seized the weapon pursuant to the discovery under Section 27 of the Indian Evidence Act (hereinafter referred to as the 'I.E. Act') at the instance of the Appellant, recorded the statement of the witnesses, sent the seized muddemal / articles for examination to the Forensic Laboratory, collected the reports from the Forensic Laboratory and on completion of the investigation submitted the Charge-Sheet against the Appellant and four other co-accused for the offence punishable under Sections 302, 143, 147, 148, 149 of the I.P.C. and for the offence punishable punishable under Section 4 r/w. Section 25 of the Arms Act.

5. The learned Trial Court framed the Charges against the Appellant and the co-accused, to which they pleaded not guilty and claimed to be tried. To establish the charge, the prosecution examined in all ten (10) witnesses and brought on record documentary evidence. On completion of the prosecution evidence, the learned Trial Court recorded the statement of the Appellant and the co-accused under Section 313 (1)(b) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Cr.PC.'). By the impugned judgment and order, the learned Trial Court convicted the Appellant as stated above in

para no.2 and convicted the co-accused No.2 to 5 for the offence punishable under Section 323 of the I.P.C. and acquitted all the accused from the Charge of the offence punishable under Sections 143, 147, 148 of the IPC and Section 4 r/w. Section 25 of the Arms Act.

6. It is submitted by the learned advocate for the Appellant that though the prosecution has examined two eye witnesses in support of the charge, their testimonies are not consistent and therefore, they need to be discarded. He further submitted that the other evidence, which is in the nature of corroboration, is of no assistance to the prosecution. He submitted that the appeal be allowed.

7. It is submitted by the learned APP that the eye witnesses have described the incident which proved the involvement of the Appellant in the crime and the other evidence corroborate the testimony of the eye witnesses. He submitted that the prosecution has successfully proved the Charge against the Appellant, therefore the appeal be dismissed.

8. It is to be noted that the present appeal is filed by the Appellant against his conviction for the offence of committing murder of Sandeep. The prosecution's case is primarily based on the testimony of eye witnesses. The Prosecution Witness No.2 – Ashok Karbhari Jadhav

and Prosecution Witness No.6 - Sanjay Suresh Jadhav are examined as the eye witnesses to the incident. Their testimony show that they are related to each other and residing at Nagardewle in Ahmednagar District. Their testimony show that P.W. No.2 – Ashok works as the cook in the hotel and his working hours are 07:00 a.m. to 07:00 p.m. and PW No.6 – Sanjay works as the salesman in the Medical Stores and his working hours are 09:00 a.m. to 06:00 p.m. Their testimony show that on 15.01.2015 after returning from their respective work, they came to the Samaj Mandir in their area where deceased Sandeep Ramlal Bhingardive was sitting near the bonfire. The Appellant came there and told deceased Sandeep that Sandeep's brother Deoram quarreled and abused him in filthy language and asked Sandeep to give understanding to his brother Deoram. The said talk turned in verbal altercation between Sandeep and the Appellant. The Appellant started assaulting Sandeep. Both these witnesses intervened. At that point of time, the co-accused came there and started assaulting Sandeep. The co-accused caught hold of Sandeep and the Appellant took out the knife and gave 10-11 blows to Sandeep, due to which Sandeep fell down. The Appellant and the co-accused left the spot. These two witnesses and others took Sandeep to the Civil Hospital where the doctor examined and declared Sandeep as dead. These witnesses deposed that the Intestine of Sandeep had come out and there were injuries on his abdomen and chest. They deposed that the clothes of the deceased

Sandeep were stained with blood.

9. These eye witnesses were cross-examined by the defence extensively. It has come in the cross-examination that when they carried deceased Sandeep in the auto rickshaw to the hospital, their clothes were not stained with blood and on this count, the learned advocate for the Appellant submits that it is doubtful whether they had seen the incident and carried the deceased Sandeep to the hospital. This contention does not impress us for the reason that the cross-examination of PW-6 Sanjay and PW No.5 - Kiran Madhukar Pakare, who was the panch for inquest show that, the body of deceased Sandeep was wrapped in the bed sheet. It is therefore, natural that their clothes were not stained with blood. The cross-examination of the two eye witnesses i.e. PW No.2 – Ashok and PW No.6 – Sanjay in no way dilute their testimony in the examination-in-chief. Not disclosing about the injury sustained by the co-accused Avinash at the hands of the Appellant in police statement by the PW-6 Sanjay do not affect the prosecution's case in any manner.

10. As can be seen from the testimony of PW No.5 - Kiran Madhukar Pakare, who was also the panch for the spot panchanama, the spot of incident is open space in front of Samaj Mandir at village Nagardewle. These two eye-witnesses were the resident of this village Nagardewle. Their evidence show that they had come at Samaj Mandir

after returning from their respective work. Therefore, the presence of both these eye witnesses on the spot at the time of incident is natural.

11. We see no merit in the contention of the learned advocate for the Appellant that the testimony of both these eye witnesses are inconsistent. On the contrary, their testimony are consistent. They both have identified the accused persons at the time of their evidence. The testimony of these eye witnesses do not create any doubt about their presence at the time of the incident, identifying the Appellant as the assailant and witnessing the incident, and thus their testimony are accepted being trustworthy.

12. There is evidence of PW No.1 - Deepak Ramlal Bhingardive, who is the brother of deceased Sandeep. His evidence show that on 15.01.2015 his brother Deoram after coming home informed him that there was exchange of hot words between him and the Appellant. His evidence further show that he received phone call from Mahesh Gautum Pakhare informing that the Appellant assaulted his deceased brother Sandeep by knife and so, he went to the civil hospital where he saw injuries on deceased Sandeep and his lungs and intestine had come out. His deposition further show that the eye witnesses narrated the incident to him and he went to the Camp Police Station at Bhingar and lodged the report, which is at Exh.50. Nothing has come in his the

cross-examination that the FIR does not corroborate the incident. Admittedly, he is not the eye witness to the incident. However, by virtue of Section 6 of the I.E. Act, his evidence becomes relevant.

13. The evidence of PW No.9 - Dilip Ramkrishna Tikone, Head Constable of the Bhingar Camp Police Station show that the FIR was written as per the information given by the informant which is at Exh.50. Even the cross-examination of this witness does not indicate that the FIR does not corroborate the testimony of the eye witnesses.

14. There is medical evidence brought on record by the prosecution by examining PW-3 Dr. Shrikant Phatak, who was the Medical Officer at the Civil Hospital at Ahmednagar. His evidence show that he conducted post-mortem on the dead body of the deceased Sandeep on 16.01.2017 between 10.30 a.m. to 11:30 a.m. and found the injuries on the body. He described the injuries in his testimony and identified the post-mortem report at Exh.56 which was prepared by him. His evidence show that cause of death was '*Hemorrhagic shock due to Intra-abdominal and thoracic Hemorrhage due to Right Lung and liver tear due to stab injury.*' His evidence show that during investigation the Investigating Officer sought his opinion with regard to the article used in the offence and he had given the opinion that the injury mentioned in the Post-mortem Report was possible by the Article-17 weapon. His

evidence go to show that proper care was taken to seal the article after he had seen it while giving the said opinion, which is at Exh.60. He deposed that the injuries mentioned in the Post-mortem Report's Column No.17, 20 and 21 were sufficient to cause death. The Post-mortem Report corroborates the testimony of this Medical Officer. The tenor of the cross-examination of this Medical Officer show that the defence wanted to bring on record that the injuries mentioned in Column No.17 were not possible by the Article-17 weapon. However, this witness has denied the said suggestion.

15. The testimony of PW-10 Shri Gorakhnath Popat Gangurde, Investigating Officer show that the PSI Gutte produced the Appellant at the Bhingar Camp Police Station on 16.01.2015 at 06:05 p.m. and he arrested the Appellant in presence of panch at 07:35 p.m. under the Arrest Panchanama at Exh.90. The tenor of the cross-examination show that the defence wanted to suggest that the Appellant had surrendered. The tenor of cross-examination further show that it was the defence version that the accused was apprehended at Pune and brought to Bhingar Camp Police Station. Whatever may be the situation, the fact remains that the Appellant was arrested on the very next day of the offence.

16. Another piece of evidence brought on record by the

prosecution is a seizure of Article-17 weapon at the instance of the Appellant pursuant to his statement given during the police custody, under Section 27 of the I.E. Act. For this, the prosecution has examined PW No.4 - Kunal Pakre, the panch witness, who deposed that on 17.01.2015 the Appellant gave the statement in the police station pursuant to which one red colour T-shirt and one jeans pant of the Appellant were seized from the place shown by him, which was the hut of his father-in-law. The evidence of PW No.4 – Kunal further show that the Article-17 knife was seized at the instance of the Appellant from his house which was kept beneath the cupboard. The cross-examination of this panch witness could not affect his testimony. The Memorandum and Panchanama at Exh.66 to 68 to that effect are brought on record in the evidence of this witness.

17. The testimony of PW No.10 - Gorakhnath Gangurde, Investigating Officer, corroborate the evidence of said panch witness in respect of the discovery and seizure of the articles at the instance of the Appellant. The discovery of the weapon at the instance of the Appellant is on the next day of his arrest when the Appellant was remanded to the police custody, as can be seen from the evidence of this witness.

18. There is evidence of PW No.7 - Sunil Adsule, which show that on 16.01.2017 clothes of deceased were seized before him.

19. The above evidence of the eye witnesses show that the Appellant assaulted the deceased Sandeep with the sharp weapon and inflicted multiple blows on his person which resulted into his death. The evidence on record show that the Appellant had come on the spot of incident with the weapon and started an altercation with the deceased and caused the injuries in the assault. The evidence of eye witnesses show that the Appellant was known to them and therefore the identity of the Appellant is established. The medical evidence corroborate the testimony of the eye witnesses. Though the prosecution witnesses were subjected to cross-examination, their testimony remained unshaken. Though there are the reports of chemical analyser showing blood stains on the clothes of the Appellant and the Article-17 knife, the same are kept out of consideration as the other injured co-accused Avinash Gorakh Pakhare and deceased Sandeep Ramlal Bhingardive are having the same blood group i.e. 'B', which is found on the said articles.

20. The defence of the Appellant is that of total denial. It is firmly established by the prosecution through the credible evidence that Sandeep's death is homicidal due to the act of Appellant. Coming to the spot of incident with the weapon and raising quarrel and assaulting the deceased, inflicting multiple blows on the deceased clearly establishes the intention of the Appellant to commit murder of Sandeep. The essential ingredients for the offence punishable under Section 302 of the

I.P.C. are clearly made out by the prosecution through the evidence. On evaluation of the evidence brought on record by the prosecution, no interference is called for in the conviction and sentence recorded by the learned Trial Court against the Appellant. Resultantly, the appeal fails and we pass the following order:

ORDER

- (i) Appeal is dismissed.

(NEERAJ P. DHOTE, J.)

(R. G. AVACHAT, J.)