



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

CRIMINAL APPEAL NO. 446 OF 2019

Chetan Naharsing Pawra
Age: 24 years, Occu.: Nil,
R/o Patel Falya Sambarkheda,
Tq. Sendhwa, Dist. Badwani (MP)
Presently Convict No. 12004,
Nashik Road, Central Prison,
Nashik

..APPELLANT

VERSUS

State of Maharashtra
Through Police Station Officer,
Police Station Amalner,
Tq. Amalner, Dist. Jalgaon

..RESPONDENT

....
Mrs. Y.M. Kshirsagar, Advocate for appellant (appointed through Legal Aid)
Mr. S.D. Ghayal, Add.P.P. for respondent - State
....

**CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ**
RESERVED ON : 06th MARCH, 2024
PRONOUNCED ON : 13th MARCH, 2024

JUDGMENT (PER : R.G. AVACHAT, J.) :

1. The challenge in this appeal is to the judgment and order of conviction and consequential sentence passed by the Additional Sessions Judge, Amalner on 26th September, 2018 in Sessions Case No. 18 of 2016. Vide the impugned judgment and order, the appellant was convicted for the offence punishable under Section 302 of the Indian Penal Code ('I.P.C.'), and therefore, sentenced to suffer imprisonment for life and to pay fine of Rs.2,000/- with default stipulation. He is, therefore, in this appeal before us.

2. Facts, as disclosed from the police papers (charge-sheet), are as follows :-

The appellant was serving as a Waiter with hotel, "Sanjay Beer Bar" at Amalner. It was 08th May, 2016. The appellant left the hotel with permission of hotel manager, P.W.1 – Nandu, to meet his cousin – Raju, who had come from Madhya Pradesh. Both, the appellant and Raju (deceased) came to the hotel by little past 05:30 p.m. Both of them were drunk. The appellant took Raju to the terrace of the hotel for sleeping him there. The appellant then came down to the hotel and resumed hotel work.

3. It is the case of prosecution that some quarrel took place between the appellant and the deceased. The deceased hit the appellant with a brick. The appellant got annoyed thereby. He took a kitchen knife from the kitchen of hotel, went upstairs and slit throat of Raju. The appellant then came down to the hotel and started working as usual. P.W.1 – Nandu, Manager of the hotel noticed the appellant going on terrace frequently. He, therefore, sent P.W.6 – Amarjit Patil, Additional Manager of the hotel, on the terrace. It was seen by him that Raju was lying in the pool of blood. P.W.1 – Nandu, therefore, lodged the F.I.R. (Exh.16) with Amalner Police Station.

4. Crime vide C.R. No. 94 of 2016 was initially registered for the offence punishable under Section 307 of the I.P.C. Injured Raju was rushed to the hospital. He succumbed to the injuries. Section 302 of the I.P.C., therefore, came to be invoked. Knife used in the commission of offence was

seized from the scene of offence. Scene of offence panchanama (Exh.18) was drawn. The appellant was arrested. Clothes on the person appellant and deceased were seized and sent for chemical analysis. Mortal remains of the deceased were subjected to autopsy. Upon completion of investigation, the appellant was proceeded against by filing charge-sheet before the Court of J.M.F.C., Amalner. The case was then committed to the Court of Additional Sessions Judge, Amalner ('trial Court') for trial in accordance with law.

5. Trial Court framed the charge (Exh.5). The appellant pleaded not guilty. His defence was of false implication.

6. The prosecution examined nine witnesses and produced in evidence certain documents to establish the charge. Trial court, on appreciation of evidence in the case, convicted the appellant and consequentially sentenced as stated above.

7. Learned counsel appointed to represent the appellant would submit that the case is based on circumstantial evidence. Suspicion, however cannot take place of proof. Conduct of the appellant was consistent with innocence. None of the prosecution witness speaks against him. She, therefore, urged for allowing the appeal.

8. Learned Add.P.P. would, on the other hand, submit that the appellant and deceased had come together to the hotel. Both of them were drunk. They went to terrace of the hotel. It was the case of last seen theory.

No one thereafter went upstairs. The appellant was seen going upstairs many a time. There was quarrel between the two. It was, therefore, for the appellant to explain how did the deceased met with homicidal death. Since no explanation is forthcoming, the only inference, that the appellant and none else has committed the murder, could be drawn. He, therefore, urged for dismissal of the appeal.

9. Considered the submissions advanced. Perused the evidence on record. Let us advert thereto and appreciate the same.

10. P.W.7 – Dr. Kapileswar conducted the autopsy on 09th May, 2016.

He noticed following injuries on the person of the deceased :-

- “i) Contusion present over right eye upper lid of size 5cm x 2.5cm. Colour of injury – blue.
- ii) Stab injury present over left mandibular portion of face 4cm lateral to midline, 6cm lateral and below to left corner of mouth, size 2.5cm x 1cm x muscle deep obliquely placed.
- iii) IV injuction wound with IV canula in situ present over front of left upper forearm.
- iv) Lacerated injury present 1cm above right eye bro over the forehead, size 5cm x 2cm x bone deep, horizontally placed.
- v) Multiple contused abrasions – present all over left cheek, varying in size – 0.8cm x 0.3cm to 8.5cm x 3cm dark red.
- vi) Lacerated injury – present over left occipital region of head. 4.5cm behind left ear, size 4.5cm x 2.0cm x bone deep obliquely placed.
- vii) Lacerated injury – present over left mastoid region, back of left ear, size 1.5cm x 1cm x bone deep obliquely placed.

- viii) Lacerated injury – present over left ear anti tragus portion, size 1cm x 0.5cm x through and through obliquely placed. Margins contused.
- ix) Stitched wound – placed horizontally over front of neck of length 13cm, 7cm below tip of chin, extends from 3.5cm left lateral to midline up to 10 cm below right mastoid tip. On opening the stitches, it is cut throat incised injury of size 11cm x 3cm x trachea deep. Tailing of length 3.5cm present over of left angle of the injury. Underlying neck muscle, right side blood vessels and trachea cut.
- x) Incised injury – present over 5cm below injury no.9 present over right side front aspect of lower neck, size 4.5cm x 1cm x muscle deep horizontally placed. Tailing present over left angle of the injury for 3cm.
- xi) Contused abrasion – present over lateral aspect of left upper arm, 4cm below left shoulder tip, size 3cm x 3cm dark red obliquely placed.”

In his opinion, the deceased died of cut throat incised injury over neck. Postmortem report is at Exhibit 31.

11. Undisputedly, the deceased died homicidal death. The question is whether the appellant is the author thereof. The case is based on circumstantial evidence. In case of **Sharad Birdhichand Sarda Vs. State of Maharashtra, (1984) 4 SCC 116**, the Apex Court has observed thus :-

“153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

(2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should

not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

12. Following circumstances are sought to be proved of guilt of the appellant :-

- last seen together;
- quarrel between the two;
- clothes on the person of appellant stained with the blood of deceased.

13. There was a hotel, "Sanjay Beer Bar" at Amalner. It was a three storey building. Hotel was running on the first floor. The second floor was being used as godown. The hotel workers would sleep on second floor overnight. The third floor, being in the nature of terrace, was used for storage of empty beer/liquor bottles. The appellant was admittedly serving with the very hotel. P.W.1 – Nandu was the Manager of the hotel. In his evidence he stated that besides the appellant, Bhikan Patil and Amarjit Patil would also serve with the hotel. It was 08th May, 2016. The appellant, with his permission left the hotel by 03:00 p.m. to meet his cousin – Raju (deceased), who had come from outstation. It is further in his evidence that

both, the appellant and deceased came back to the hotel by 05:30 p.m. Both of them were drunk. The appellant, with his permission took Raju to the terrace of the hotel, since Raju wanted to sleep. The appellant thereafter came down and resumed hotel work. It is further in his evidence that the appellant took Rs.500/- from him to pay Raju, to go his village. Since the appellant was frequently going on terrace, he asked P.W.6 – Amarjit, Co-Manager to go to terrace. P.W.6 – Amarjit, in turn, went on terrace to find Raju to have been lying in the pool of blood. He hurriedly came downstairs and reported the same to P.W.1- Nandu, who in turn, lodged the F.I.R. (Exh.16). It was registered by 09:30 p.m. same day.

14. Evidence of P.W.6 – Amarjit is consistent with that of P.W.1 – Nandu. On material particulars, however Amarjit did not stand by prosecution. Learned A.P.P. in-charge of the case, therefore, cross-examined him. Then we have evidence of P.W.5 – Bhikan, Cook of the hotel. He too did not stand by prosecution. P.W.2 – Keshav is a witness to the scene of offence panchanama (Exh.18). It was drawn on the following morning during 07:00 a.m. to 08:30 a.m. A blood stained knife was seized from the scene of offence. P.W. 3 – Hemant is a witness to the inquest panchanama (Exh.22), while P.W.4 – Vijaykumar, Police Naik had collected the clothes of deceased from the civil hospital and handed over to P.W.9 – Udaysing, Investigating Officer. P.W.8 – Bharat, Police Constable carried the seized articles of the appellant and deceased to Forensic Science Laboratory, Nashik. The C.A. reports find place at Exhibits 55 to 57.

15. Close appreciation of the evidence of P.W.1 – Nandu (informant) and the co-employees of the hotel would indicate that none of them support the prosecution. P.W.1 – Nandu was even not declared to have been won over. The same indicates, prosecution is very much relying on his evidence. His evidence leads us only to infer that the appellant alongwith deceased had come to the hotel. The deceased slept on the terrace. Thereafter, the appellant visited the terrace two-three times. His evidence, however further indicates that after having come down to the hotel, the appellant resumed hotel work as usual. When the appellant resumed work, he (informant) did not notice blood stains on the clothes of his person. It is further in his evidence that P.W.6 – Amarjit too did not see what had happened on the terrace. His evidence would further indicate that the appellant was an honest employee. He had never picked up quarrel with the customers, nor did he run away after the incident.

16. P.W.5 – Bhikan, Cook of the hotel, disowned the appellant to have had taken a kitchen knife from him with a view to slit throat of his cousin (deceased). According to him, he could not see happenings on the terrace from the kitchen room. He, therefore, could not say who went to the terrace during the day. He was confronted with his police statement. He denied to have made certain statements therein, which are marked, “A and B”. Although these statements are duly proved by evidence of I.O., the fact remains that the same cannot take place of evidence before the Court.

17. Same is the case of evidence of P.W.6 – Amarjit. He too did not stand by prosecution. Learned A.P.P. extensively cross-examined him. It is in his evidence that by the time incident took place on the terrace, the appellant was doing his hotel work as usual. The appellant did not run away.

18. As such, the aforesaid evidence indicate that both, the appellant and Raju (deceased) came to hotel by little past 05:30 p.m. Both of them were drunk. The appellant took Raju on the terrace. Raju slept on terrace. The terrace was used to store empty bottles of beer/liquor. Same suggests others had access on the terrace. True, the appellant went to terrace two-three times post Raju went to sleep on terrace. The evidence would further indicate that the appellant resumed his work as usual. He did not run away. Clothes on his person did not bear any blood stain. It is, therefore, surprising as to how C.A. report (Exh.57) relating to clothes of the appellant bears blood stains of 'A' group. The appellant was arrested twelve hours after the incident. The C.A. report further indicates that blood group of deceased was also 'A'. It was the case of prosecution that the deceased had assaulted the appellant with a brick. Blood group of appellant too was 'A'. The same is, however not in substantive evidence. On arrest, the appellant appears to have not been medically screened. There is, therefore, nothing to indicate whether he had suffered any injury and the blood stains on his clothes were that of his own. Mere fact of finding blood stains of blood group of the deceased on the clothes of appellant is not sufficient to conclude the appellant to be the author of crime. It is reiterated that all the hotel

employees, who were working with the appellant, did not stand by prosecution. After the death of Raju, the appellant admittedly resumed hotel work as usual. Neither P.W.1, 5 or 6 noticed any blood stain on his person. Needless to mention, suspicion, however strong, cannot take place of proof. The motive has not been proved. None of the circumstance relied on to bring home the charge have been conclusively established, since the place whereat the murder took place was accessible to all the hotel employees.

19. Based on the aforesaid evidence, the trial Court ought not to have convicted the appellant. We are not at one with the findings recorded by trial Court. Interference with the impugned judgment and consequential order is, therefore, warranted. In the result, we pass the following order :-

ORDER

- (I) Criminal appeal is allowed.
- (II) Judgment and order of conviction and sentence dated 26th September, 2018 passed by the Additional Sessions Judge, Amalner in Sessions Case No. 18 of 2016 is hereby set aside.
- (III) The appellant is acquitted of the offence punishable under Section 302 of the Indian Penal Code.
- (IV) The appellant be set at liberty forthwith, if not required in any other case.
- (V) Fine amount paid, if any, be refunded to the appellant.

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

SSD