

(2022) 03 BOM CK 0039
In the Bombay High Court
Case No : Criminal Appeal No.1192 Of 2016

Aadil Rafique Shaikh	Vs	APPELLANT
State Of Maharashtra		RESPONDENT

Date of Decision : 11-03-2022

Acts Referred:

Indian Penal Code, 1860 — Section 302, 323
Maharashtra Police Act, 1951 — Section 135

Citation : (2022) 03 BOM CK 0039

Hon'ble Judges : Sadhana S. Jadhav, J;Sarang V. Kotwal, J

Bench : Division Bench

Advocate : Farhana Shah, M.M. Deshmukh

Final Decision : Dismissed

Judgement

Sarang V. Kotwal, J

1 The Appellant faced Sessions Case No.2/2011 on the file of the Court of Sessions at Dindoshi, Mumbai as the sole accused. He was facing the charge for the offence punishable under Sections 302 and 323 of IPC as well as under Section 135 of the Maharashtra Police Act.

2 At the conclusion of the trial, the learned Judge vide his judgment and order dated 5.9.2012 convicted the Appellant for commission of the offence punishable under Section 302 of IPC; and sentenced him to suffer imprisonment for life and to pay a fine of Rs.2,000/-; and in default to suffer RI for two years. He was acquitted of the other two charges.

3 Heard Ms. Farhana Shah, learned counsel for the Appellant and Ms. M.M. Deshmukh, learned APP for the State.

4 The prosecution case was that the deceased Darshana was a common friend of the Appellant and another girl. They were all studying together. The Appellant and that girl were having love affair. However, that girl broke-up with the

Appellant. The Appellant was suspecting that Darshana had poisoned that girl's mind against the Appellant. Therefore, getting angry the Appellant committed Darshana's murder on 26.8.2010 at about 8.15 p.m. at the spot within the jurisdiction of Bangur Nagar police station. From the record, this motive is not sufficiently proved by the prosecution. However, there is direct evidence of two eye witnesses and other circumstantial evidence against the Appellant, as discussed hereafter.

5 The prosecution case heavily relies on the evidence of two eye witnesses. PW-1 Gopal Mandal was one of them, who had lodged this FIR. Thus, he is also the first informant. PW-2 Siraj Shah was another eye witness. Both of them had actually seen the incident and had apprehended the Appellant on the spot. They handed him over to the police. Therefore, their evidence is important.

6 The other important witnesses, in this case, are PW-9 Head Constable Mangesh Jadhav attached to Bangur Nagar police station, who had gone to the spot along with other officers on receiving information from the beat marshal. PW-10 Police Naik Arvind Dhuri was the beat marshal along with Vijay Kadam and they were taking round in that area. Both of them had reached the spot on hearing the commotion. This witness had informed the control room about the incident.

7 PW-11 ASI Shivaji Kasarkar had gone to the spot and, along with others, had taken the deceased to Bhagwati hospital. PW-13 Dr. Pradnya Malgundkar had examined PW-1 and PW-2 as well as the Appellant for the injuries sustained by them. PW-14 Dr. Rahul Kabra had conducted the postmortem examination.

8 PW-15 API Deepak Kirkire and PW-16 PI Anil Walzade had conducted the investigation at different stages.

9 Apart from these main witnesses, there were other witnesses, whose evidence is not as important. They are:

PW-3 Naresh Dave, who was a pancha for arrest panchnama. PW-4 Ghosalkar was a pancha who was present when the knife was allegedly identified by mother of the Appellant. PW-5 Arjun Dave, who was a pancha in whose presence the Appellant produced his bag full of books, but, this piece of evidence is not really material. PW-6 Akhila Mantri was a pancha for inquest panchnama. PW-7 Akbar Shaikh had sold his motorcycle to the Appellant. PW-8 was the girl with whom the Appellant had an affair. This witness has turned hostile and, therefore, has not helped the prosecution case.

10 The defence of the Appellant was of total denial. According to him, he was not at the spot and he is falsely implicated at the instance of the police.

11 Learned counsel for the Appellant submitted that the evidence of PW-1 and PW-2 is not trustworthy. Admittedly there was no light on the road where the incident had taken place and, therefore, both these witnesses could not have been in a position to see the incident clearly. The prosecution has failed to bring on record the motive. There is doubt created about recovery of the knife. PW-1

was a tutored witness because his FIR was read-over to him by the police before his deposition.

12 Learned APP, on the other hand, relied on the depositions of PW-1 and PW-2 as well as the medical evidence and recovery of knife.

13 We have considered these submission. We have scrutinized the evidence of all the witnesses. As is contended by both the sides, the depositions of PW-1 and PW-2 are important.

14 PW-1 Gopal Mandal has stated that during the day time he was working as a sweeper and in the night time he worked as a watchman in Raheja Interface, Dumping Road, Malad (West), Mumbai. The incident has taken place on this road. The BMC vehicles carrying the waste-materials are parked at that place.

PW-1 used to keep watch on these vehicles. On 26.8.2010 when he was on duty, at about 8.15 p.m. to 8.30 p.m., he saw PW-2 repairing a vehicle. At a short distance, one motor-cycle was parked. He heard shouts from one girl. She was shouting for help. The informant rushed there. He saw that a boy was giving blows of knife to that girl on her neck and face. PW-2 Siraj also rushed there. On seeing both of them, the boy pushed the girl away and started going away on his motor-cycle. There was some scuffle between that boy on one hand and both these witnesses on the other. But that boy was over-powered. In the meantime, a duty constable came there on motor-cycle. He made enquiries. He called the police. A police vehicle came there. The girl was taken to the hospital. This witness was taken to police station where his complaint was recorded. The prosecution produced his complaint at Exhibit-15 in this case. This witness has identified the contents of the complaint and admitted them to be true.

In the cross-examination, he deposed that, at the time of recording of his complaint he himself, PW-2 and police officer were present in the police station in one room. He left the police station at 4.00 a.m. He did not have any identity proof to show that he was employed as a watchman. The supervisor was not found by the police at that time. He stated that he had given description of the accused to the police making enquiry. There were some minor contradictions in his deposition and in his FIR regarding the girl trying to hold PW-2 for support.

He was cross-examined regarding the scuffle between himself and the Appellant. He has admitted in the cross-examination that he had reached the hospital between 9.30 p.m. to 10.00 p.m.. In the hospital he had given information of assault caused to the witness himself to the doctor. According to him the police constable had read over the complaint to him to refresh his memory but he has not given evidence on the directions of the police. He denied the suggestion that the Appellant was not present on the spot at the relevant time; and that he had not seen the incident.

15 PW-2 Siraj Shah has substantially supported the evidence of PW-1. He was knowing PW-1. This witness was doing some repair work on a car. One of the

head-lights of that car was working and the other one was not working. On hearing noise, he also reached to the spot as did PW-1. This witness actually saw the Appellant giving blows with knife on that girl's neck. The boy was trying to run away from the spot, but, this witness chased and caught him. Thereafter the police came there. The police van was called. This witness had accompanied the police to Bhagwati Hospital. He had also sustained injury in the scuffle with the assailant. PW-1 had also gone to the hospital for his injury. He identified the assailant as the Appellant who was present in the Court when his evidence was recorded. His statement was recorded at hospital between 10.00 p.m. to 10.30 p.m. From the hospital he went to the police station and then he left the police station at 6.00 a.m. on the next day. There again the police made enquiries with him. He had seen the police making enquiries with PW-1.

In the cross-examination, he has stated that he has not noted down number of the vehicle in which he went to the hospital. He had not seen name of the officers who were taking him and PW-1 to hospital. According to him, he was present when PW-1's statement was recorded. In his police statement, it was not mentioned that he was repairing a vehicle at the time of incident and that one head-light was working out of the two. He could not assign any reason why this fact was not recorded in the statement. There were other minor contradictions in his deposition and in his police statement regarding throwing away key of the motor-cycle, about the assailant standing near the motor-cycle and this witness chasing him. He could not explain why there were these contradictions.

16 The evidence of these two witnesses, in our opinion, proves the prosecution case. There is absolutely no reason as to why their evidence should be disbelieved. The most clinching evidence which emerges from their deposition is that the Appellant was caught at the spot. The police arrived within a short time. Both these witnesses had in the meantime caught the Appellant and handed him over to the police when they came.

17 PW-13 Dr. Pradnya Malgundkar had examined PW-1, PW-2 as well as the Appellant. PW-1 had suffered C.L.W. of the size 2 x 2 x 1 cm. PW-2 had suffered blunt trauma on his right hand; and the appellant had suffered C.L.W. on his left forearm of the size 3 x 2 x 1 cm. This evidence corroborates the deposition of PW-1 and PW-2 though there are suggestions given to this doctor that the Appellant's injury was possible by falling on uneven surface. It is sufficiently proved that the Appellant and both these witnesses were taken to the hospital immediately after the incident and, therefore, this evidence lends support to the depositions of PW-1 and PW-2.

18 PW-15 API Deepak Kirkire went to the spot after the beat marshal informed the control room. When he went there, he saw that the beat marshal had detained the Appellant. PW-1 and PW-2 were also present there. He had supervised the preparation of inquest panchnama and had informed the victim's family. His evidence shows presence of PW-1, PW-2 and the Appellant at the spot. It also supports the case that the Appellant was caught at the spot and was

given in the custody of the beat marshal. PW-1 and PW-2 were sent to the hospital. This witness had also conducted the spot panchnama and during this panchnama the murder weapon i.e. the knife was recovered from the spot. The spot panchnama is brought on record at Exhibit-54. Apart from that, the motor-cycle was also seen at the spot. The registration number of the motor-cycle is mentioned in the spot panchnama. PW-7 had stated that the same motor-cycle was sold by him to the Appellant.

19 The postmortem notes show that the deceased had suffered as many as eighteen injuries on the head, face, chest, arms etc.. The cause of death was mentioned as "hemorrhage and shock due to incised stab wound (unnatural)". There are incised wounds on the chest as well as on the neck, as mentioned by PW-1. Therefore, this medical evidence also supports the direct evidence of eye witnesses. The C.A. report at Exhibit-71 shows that the blood group of the deceased was "AB-group". Human blood was found on the knife. These are the additional circumstances against the Appellant.

20 PW-10 Police Naik Arvind Dhuri was a beat marshal and he had immediately reached the spot. He had seen that two persons had caught the Appellant and the girl was found lying in a pool of blood. He himself had then informed the control room. PW-9 Head Constable Mangesh Jadhav and PW-11 ASI Shivaji Kesarkar had gone to the spot on receiving message at the control room. They have sufficiently corroborated the evidence of beat marshal Arvind Dhuri.

21 Thus, the story of the prosecution is quite consistent as deposed by these witnesses. The Appellant was caught at the spot immediately after commission of the offence. PW-1 and PW-2 have seen the incident. There is no reason to discard their evidence. Therefore, we are satisfied that the prosecution has proved its case beyond reasonable doubt. There is no reason to interfere with the impugned judgment and order. The Appeal is, therefore, dismissed.

(SARANG V. KOTWAL, J.) (SMT. SADHANA S. JADHAV, J.)

22 At this stage, learned counsel for the Appellant submitted that as on today, he is on parole. She submitted that sufficient time be granted to the Appellant to surrender. Considering her request, four weeks' time to surrender is granted to the Appellant.