
(2022) 11 BOM CK 0034
In the Bombay High Court
Case No : Criminal Appeal No. 959 Of 2015

Anil Raju Kiratkudwe

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision : 14-11-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 169, 235(2)
Indian Penal Code, 1860 — Section 34, 302
Bombay Police Act, 1951 — Section 37(1), 135

Citation : (2022) 11 BOM CK 0034

Hon'ble Judges : A.S. Gadkari, J;Milind N. Jadhav, J

Bench : Division Bench

Advocate : Vikas B. Shivarkar, S.S. Hulke

Final Decision : Dismissed

Judgement

Milind N. Jadhav, J

1. This Criminal Appeal challenges the Judgment and Order dated 18.09.2015 passed by the learned District Judge – 12 and Additional Sessions Judge, Pune (for short "Trial Court") in Sessions Case No. 968 of 2013 convicting Appellant under Section 235(2) of the Criminal Procedure Code, 1973 (for short "Cr.P.C.") of offence punishable under Section 302 of the Indian Penal Code (for short "IPC") and sentenced him to suffer rigorous imprisonment for life and to pay fine of Rs.5,000/-.

2. Appellant is convicted for murder of Kiran Bhise (hereinafter referred to as "deceased Kiran") committed on 21.07.2013 around 16.30 hours at Survey No. 637/2/B, Omkar Nagar, in front of Bhairavnath Super Market, near Saguna Chicken Center, Bibwewadi, Pune-400 037 (spot of incident).

3. We have heard Mr. Shivarkar, learned Advocate for Appellant at length and Mr. Hulke, learned APP and with their able assistance perused the entire record of the case.

4. Prosecution case is based on ocular evidence i.e. eye-witness account of PW-2 and PW-3 of the incident.

Facts of the case are as under:-

4.1. The prelude to the incident is a quarrel which ensued between Appellant and Kiran over Kiran's lover affair with one Ms. Praniti Shinde resident of the same village. On 21.07.2013, Appellant alongwith his friends Suraj Mane, Tushar Warkhade and Siddharth Kapdule after visiting a cyber cafe in the area were walking towards their house when Appellant confronted Kiran at the spot incident and questioned him as to why he stared at him nastily. He threatened Kiran to break his relationship with Praniti and thereafter assaulted him with knife on his stomach and other parts of the body.

4.2. Kiran's friends initially intervened, but when threatened by Kiran with the knife ran away from the spot and returned back after the incident. Kiran also ran, but was chased and assaulted by Appellant.

4.3. PW-2 Rupa Bhise, aunt of Kiran happened to be near the spot of incident when it occurred. She had come there to buy chicken. She witnessed commotion and saw Appellant assaulting Kiran with knife behind the drainage hole near the supermarket.

4.4. Injured Kiran was initially taken to Sahyadri hospital and later shifted to Bharati Hospital where he succumbed to his injuries on the next morning at 7.45 hrs.

4.5. PW-1, mother of Kiran received a phone call from PW-2 and she rushed to Bharati Hospital. She lodged report with Bibwewadi Police Station and accordingly Crime No. 103/2013 under Section 302 Indian Penal Code (for short "IPC") read with Section 34 IPC came to be registered.

4.6. Investigating Officer (IO) recorded statements of witnesses and arrested Appellant. Clothes of Appellant were seized under seizure panchanama (Exh.28). The weapon used by Appellant i.e. knife was recovered at his instance (Article-B) which was seized under memorandum and recovery panchanama (Exh.23 and 24) in the presence of PW-5. He forwarded the seized articles to the C.A. and collected the Post Mortem (PM) notes (Exh.31) from Sasoon hospital.

4.7. Initially, Appellant and one Ganesh Kamble were both arrested. Ganesh Kamble is the uncle of Praniti. According to prosecution and PW-1, 15 days before the date of incident, Ganesh Kamble had assaulted PW-1 and Kiran in PW-2's house and threatened them due to the love affair between Kiran and Praniti. It is also the prosecution case that Appellant was in love with Praniti and therefore assaulted Kiran, though on this aspect there is no evidence produced on record. On 14.10.2013 Investigating Officer forwarded a report under Section 169 of Code of Criminal Procedure, 1973 (for short "Cr.PC") in respect of Ganesh Kamble and he was released.

4.8. After completing investigation, IO forwarded the chargesheet to the Court of learned Judicial Magistrate First Class (JMFC) Court No.4, Pune. Since the offence under Section 302 IPC is exclusively triable by the Court of Sessions, learned JMFC committed the case to the Sessions Court, Pune for trial.

4.9. Charge (Exh.6) was framed against Appellant under Section 302 IPC and under Section 37(1) read with 135 of Bombay Police Act. Contents of charge were read over and explained to Appellant in vernacular language. He pleaded not guilty and claimed to be tried.

5. In order to bring home guilt of Appellant, prosecution examined 10 witnesses. Defence did not examine any witness. As seen PW-1 is the informant and mother of deceased Kiran who lodged the FIR. PW-2 (Rupa Bhise) and PW-3 (Tushar Warkhade) are two eye-witnesses to the incident. PW-4 is the panch witness to spot panchanama (Exh.17). PW-5 is the panch witness to memorandum and seizure panchanama (Exh. 23 and 24) of the weapon i.e. knife (Article-B).

6. Mr. Shivarkar has in support of the Appellant's case advanced the following submissions and submitted that prosecution case is replete with material discrepancies and contradictions resulting in prosecution miserably failing to prove its case beyond reasonable doubt:-

(i) That there is material discrepancy in the prosecution evidence regarding the incident. That PW-1 has deposed that she received a phone call about the assault on Kiran from PW-2 at about 4:00 p.m. However PW-2 in her evidence has not stated about making any phone call to PW-1. She has also denied the incident which had taken place in her house 15 days prior to the present incident where Ganesh Kamble had assaulted and threatened PW-1 and Appellant;

(ii) That it has come in the evidence of PW-2 that she had become unconscious at the spot of incident and regained consciousness at 1:00 a.m. in the intervening night of 21.07.2013 and 22.07.2017 in the hospital. Therefore prosecution case that PW-2 alongwith PW-3 and his friends took Kiran to hospital after the assault is false;

(iii) That I.O. has not recovered the blood stained clothes of PW-2 and PW-3 or any other friend who assisted them to remove Kiran to the hospital;

(iv) That PW-2 herself has stated and contradicted that she does not know who informed PW-1 on phone about the incident;

(v) That PW-2 has stated that her statement was recorded twice by the Police Officer, but the IO in his deposition has stated that her statement was recorded only once;

(vi) That the blood group of deceased in the CA Report was inconclusive and did not match with the blood group of Appellant;

(vii) That there was a specific motive about the love affair between Kiran and Praniti and this ought to have been investigated to its logical end by the

prosecution;

(viii) That both eye-witnesses are interested witnesses; PW-2 is related to Kiran whereas PW-3 is his friend.

Mr. Shivarkar has therefore urged to set aside the impugned Judgment and grant acquittal to Appellant.

7. Mr. Hulke, learned APP has taken us through the evidence of PW-2 and 3 and submitted that assuming there are discrepancies and contradictions, they are minor in nature and their evidence taken as a whole cannot be disbelieved. He has submitted that the present Appeal deserves to be dismissed.

8. It is seen that prosecution case is based on ocular evidence. There are two eye-witnesses to the incident. Hence let us consider their evidence threadbare.

8.1. PW-2 is an eye-witness to the incident. She has deposed that she was present at the spot of incident when Kiran was assaulted by Appellant with the weapon (steel knife-Article-B). She screamed on seeing the assault and Appellant ran away from the spot. Thereafter Siddharth and Tushar (PW-3) arrived at the spot. The three of them took Kiran to Sahyadri hospital and later to Bharati hospital for treatment. After Kiran's admission, she felt giddy and became unconscious. She has been extensively cross-examined. She has in her cross-examination deposed that there was a love affair between Kiran and Praniti which was not approved by Ganesh Kamble (maternal uncle of Praniti). She has deposed that she knew the Appellant and in her statement to the Police has stated that Appellant was interested in and was a former lover of Praniti. The evidence of PW-2 clearly establishes the presence of Appellant at the scene of crime. It also establishes that Appellant is the author of the crime. The evidence of PW-2 is an eye-witness account of the incident and of what transpired thereafter and is not shaken in cross-examination. She has also identified the weapon used by Appellant. This evidence of PW-2 is materially corroborated and supported by the deposition of PW-3. PW-3 has stated that Appellant confronted Kiran and his three friends (including him). He abused and threatened him with knife and asked him to break his relations with Praniti. However when he and the other friends intervened, Appellant threatened them with the same knife, hence he ran away from the spot. He has deposed that even Kiran ran away from the spot where he was threatened, but Appellant chased him with the knife. Deposition of PW-3 establishes Appellant's presence with the weapon at the scene of crime. There is no evidence produced by the defence to the contrary. PW-3 immediately after some time returned to the scene of crime and found Kiran grievously injured. He has also confirmed the presence of PW-2, which cannot be doubted. Both PW-2 and PW-3 have also deposed on the motive i.e. the love affair between Kiran and Praniti and confirmed the same. Though Advocate for Appellant has strongly argued that there are contradictions in the deposition of PW-2 and PW-3, on a minute perusal of the evidence we are afraid to state that the contradictions are minor and do not shake the substratum of the

case before us. The contradictions do not go to the root of the crime. We are of the considered opinion that the depositions about actual act of crime are not disturbed by the minor contradictions and evidence of PW-2 and PW-3 therefore cannot be disbelieved.

8.2. We are fortified in arriving at the above finding in view of the medical evidence given by PW-6 and PW-8.

PW-6, Dr. Pankaj H. Bansode treated Kiran on admission to hospital. He found his condition critical and noticed the following injuries:

“(i) 3 x 2 cm intraperitoneal deep stab wound over right hypochondriac region with active bleeding.

(ii) 2 x 1 x 5 cm retroperitoneal deep stab wound present over right lumbar region with active bleeding.

(iii) 6 x 5 x 5 cm muscle deep stab wound in left axillary region with active bleeding.

(iv) Left forearm deformity present. Horizontal 2 x 2 cm muscle deep stab present over ventral aspect of left forearm with active bleeding. Puncture wound 1 x 1 cm present over left forearm medial to the above wound, subcutaneous deep.

(v) Multiple abrasions present over the present toe and digits of right lower limb (Dorsal aspect).

(vi) 0.5 x 0.5 cm subcutaneous deep stab wound present over the right anterior superior iliac spine.

(vii) Abrasions over the left foot great toe dorsal aspect.”

8.3. PW-6 has noted the history when Kiran was admitted to hospital. He has deposed that the injuries were possible with Article-B i.e. the weapon used by Appellant. He has produced in evidence 70 case papers of the treatment given to Kiran (Exh.26 colly).

8.4. PW-8, Dr. Vijay T. Jadhav conducted the autopsy and prepared the PM notes (Exh.31). He has opined that the cause of death due to hemorrhagic shock due to stab injuries to right lung and liver. In the PM notes, he has notified the following injuries:

External injuries :-

(i) A stitched wound present over abdomen in the midline, with 12 stitches in situ, vertically placed. On removing the stitches, a therapeutic laparotomy wound present.

(ii) A stappled wound present over right side of chest extending to right infrascapular region of back of trunk, situated 03 cm below right nipple in the 5th

intercostal space with 31 stappled pins in situ. On removing the staple pins, a therapeutic thoracotomy wound present with stitches in the inter-costal muscles of 5th intercostal space.

(iii) A stitched wound present over right side of front of chest, situated 09 cm below right nipple and 05 cm right lateral to midline with 03 stitches in situ. On removing the stitches, a stab wound of size 3 cm x 1 cm x cavity deep present in the right 6th intercostal space, directed vertically downward and backward, piercing the right dome of diaphragm, resulted in stab wound to right lobe of liver.

(iv) A stappled wound present over right lateral aspect of chest, along anterior axillary line with 05 staple pins in situ. On removing the staple pins, a incised wound of size 5 cm x 1 cm x muscle deep present.

(v) A stitched wound present over right lateral aspect of chest situated 03 cm right lateral to right nipple with 02 stitches in situ. On removing the stitches, a stab wound of size 2 cm x 0.5 cm x cavity deep present in the right 4th intercostal space.

(vi) Stab wound present over right lateral aspect of chest situated 03 cm below injury No.2 of size 1.5 cm x 0.5 cm x muscle deep.

(vii) A stitched wound present over right lateral aspect of lower chest, situated 8 cm below injury No.2 with 02 stitches in situ. On removing the stitches, evidence of therapeutic intercostal drainage tube insertion present.

(viii) A stitched wound present over right side of back of trunk with 2 stitches in situ. On removing the stitches, a incised wound of size 2 cm x 0.5 cm x muscle deep present.

(ix) A stitched wound present over right lumbar region with one stitch in situ. On removing a stitch, a stab wound of size 1.5 cm x 0.5 cm x cavity deep present.

(x) A stitched wound present over upper 1/3rd of posterior aspect of right forearm with one stitch in situ. On removing a stitch, a stab wound of size 1 cm x 0.5 cm x muscle deep present.

(xi) Contusion present over upper half of right forearm of size 10 cm x 6 cm, bluish.

(xii) Incised wound present over left axillary region of size 10 cm x 3 cm x muscle deep.

(xiii) Stab wound present over middle 1/3rd of posterior aspect of left forearm of size 2 cm x 1 cm x muscle deep.

(xiv) Injection mark for insertion of therapeutic central venous line present over right supraclavicular region.

Internal injuries :-

(i) Column No.20(b) Right pleural cavity contains about 100 ml blood.

(ii) A stitched wound present over lower lobe of right lung. On removing a stitch, a stab wound present, corresponding to injury No.5 mentioned in column No.17.

Column No.21-

Cavity – Peritoneal cavity contains about 200 ml blood 6 gauze (mops and gel foam) for bleeding control present in the peritoneal cavity.

Liver – Seven stitches present over the liver, (right lobe), on removing the stitches a stab wound present, corresponding to injury No.3 mentioned in column No. 17.”

8.5. From minute perusal of the above evidence, it is seen that Kiran was brutally stabbed multiple times resulting in fatality. PW-8 has opined that the injuries seen on Kiran’s body could be caused by the weapon (Article-B) used by the Appellant. Thus the Medical evidence clearly supports the ocular evidence of PW-2 and PW-3 and establishes that the Appellant is the perpetrator of the present crime. The Recovery panchanama also supports the prosecution case. The evidence of prosecution witnesses clearly indicts the Appellant and his presence at the scene of crime. This evidence is not shaken or disturbed by the minor contradictions pointed out by the Appellant.

9. Hence we find no infirmity in the Judgment and Order dated 18.09.2015 passed by the learned Trial Court and the same does not call for any interference.

10. In view of the above discussion and findings, Criminal Appeal No. 959 of 2015 stands dismissed.