
(1998) 12 BOM CK 0015

In the Bombay High Court

Case No : Criminal Appeal No. 63 of 1995, with Criminal Appeal No. 68 of 1995

Arjun Prabhakar Kunjawane and another APPELLANT

Vs

The State of Maharashtra RESPONDENT

Date of Decision : 07-12-1998

Acts Referred:

Bombay Police Act, 1951 — Section 135, 37

Evidence Act, 1872 — Section 3, 8, 9

Penal Code, 1860 (IPC) — Section 302

Citation : (1999) 5 BomCR 332 : (1999) CriLJ 2409

Hon'ble Judges : Vishnu Sahai, J; Ashok A. Desai, J

Bench : Division Bench

Advocate : B.G. Tangsali, for the Appellant; J.S. Pawar, Assistant Public Prosecutor, for the Respondent

Judgement

Vishnu Sahai, J.—Since these appeals arise out of the same incident and a common impugned Judgment, we are disposing them off by one Judgment.

These appeals arise out of Judgment and order dated 7-12-1994 passed by Additional Sessions Judge, Greater Bombay, in Sessions Case No. 534 of 1992, whereby the appellants have been convicted and sentenced in the manner stated hereinafter :-

(i) u/s 302 r/w 34 I.P.C. to suffer imprisonment for life;

(ii) u/s 37 r/w 135 of the Bombay Police Act to suffer R.I. for four months and to pay a fine of Rs. 100/- i.d. to undergo S.I. for one week.

The substantive sentences of the appellants were ordered to run concurrently.

It would be pertinent to point out that along with the appellants, one Ashok Bhingardive was also tried but, since the evidence against him was of identification and the admission of the informant Sushila P.W. 1 in cross-examination was that prior to the test identification, she had seen the said person at Dadar Police Station, he has been acquitted by the learned trial Judge.

2. In short, the prosecution case runs as under :-

The appellants were friends of the deceased Shankar who used to live in a hut near Jogani Industries, Masjid Galli, Zopadpatti, Bhavani Shankar Road, Dadar Bombay-26.

On the date of the incident (1-10-1991) at about 7 p.m. the appellants came to the hut of the deceased and enquired from his wife Smt. Sushila Gholap P.W. 1 the whereabouts of her husband. She replied that he had gone out. At about 11.30 p.m. the same night, the deceased Shankar returned to his hut. At about 1.15 a.m. that very night, the appellant Arjun armed with a gupti and the appellant Arun armed with a scythe along with the acquitted accused Ashok Bhingardive came to the hut of the deceased Shankar. At that time, Shankar along with the informant Sushila P.W. 1 and his daughter Savita sic Kavita P.W. 2 was sleeping in front of his hut. The appellants started assaulting Shankar with their weapons. This assault on Shankar was witnessed by Sushila who on account of a headache, was awake at that time, her daughter Savita who got up on hearing her cries and Ashok Bhagyawan P.W. 3, a cousin of Shankar, whose hut was situated opposite that of Shankar. After assaulting Shankar, the appellants and the acquitted accused ran away.

3. The evidence is that after the incident, Sushila leaving her husband proceeded to Dadar Police Station and Ashok proceeded to inform Shankar's relatives. The evidence also is that pursuant to the information given by Sushila, police came on the place of the incident and thereafter took Shankar to K.E.M. Hospital, where he was pronounced dead. It is alleged by the prosecution that Sushila and Shankar sic Ashok also thereafter reached K.E.M. Hospital.

4. The F.I.R. of the incident was lodged the same night at 2.55 a.m. by Sushila P.W. 1. It was recorded by P.S.I. Sonar at K.E.M. Hospital and on its basis, C.R. No. 760 of 1991 of police station Dadar was registered. 5. The investigation was conducted in the usual manner by Sr. P.I. Vijay Pednekar P.W. 9. During the course of it, the blood-stained clothes of appellant Arjun and the blood-stained gupti used by him in the incident were recovered under a panchanama, in the presence of public panch and the Investigating Officer, on the pointing out of the appellant Arjun but, we are not adverting to these recoveries in detail because, the learned trial Judge has rightly not placed any reliance on them for they were effected from a open place.

On completion of the investigation, the appellants were charge sheeted.

6. Going backwards, the autopsy on the corpse of the deceased Shankar was conducted on 1-10-1991 by Dr. Subhash Khanolkar P.W. 5 who found on it 26 ante-mortem injuries, their break up being thus: 15 incised stab wounds, 9 incised wounds, and 2 abrasions.

On internal examination, Dr. Khanolkar found extensive internal damage involving fracture of right temporal bone and right parietal bone. He also found

lobe of the right lung punctured, pericardium cut, left ventricle cut and perforation on the left side of chest.

In the opinion of Dr. Khanolkar, the deceased died on account of multiple injuries attributable to sharp edged weapons like chopper and scythe.

7. Pursuant to the commitment of the case, the appellants and the acquitted accused Ashok Bhingardive were charged for offences mentioned in para 1.

During the trial, the prosecution examined 9 witnesses. 3 of them namely Sushila P.W. 1, Kavita P.W. 2 and Ashok P.W. 3, wife, daughter and cousin of the deceased Shankar respectively were examined as eye-witnesses.

The defence of the appellants was that of denial but they examined no witness to substantiate it.

The learned trial Judge believed the evidence adduced by the prosecution and convicted and sentenced the appellants in the manner stated above. As mentioned in para 1, he acquitted the co-accused Ashok Bhingardive.

8. We have heard Mr. B. G. Tangsali for the appellants and Mrs. J.S. Pawar, Additional Public Prosecutor for the State of Maharashtra respondent. We have also perused the entire material on record. We are constrained to observe that we do not find any merit in these appeals.

9. The conviction of the appellants is founded on the testimony of three eye-witnesses namely Sushila P.W. 1, Kavita P.W. 2 and Ashok P.W. 3 wife, daughter and cousin of the deceased Shankar respectively; Since these witnesses are the close relatives of the deceased, we have borne in mind that their evidence has to be evaluated with caution. But, even after evaluating it, on the said yardstick, we find it credit-worthy.

The star witness of the prosecution is Sushila P.W. 1, the wife of the deceased Shankar. Her evidence is that along with her daughter Kavita and the deceased, she used to live in a hut near Jogani Industries on Bhavani Shankar Road, Dadar, Bombay-26. She stated that on the date of the incident (1-10-1991) at about 7 p.m. the appellants came to her hut and enquired from her the whereabouts of her husband. At that time, her husband was not at the hut. At about 11.30 p.m. her returned to the hut. The same night, at about 1.15 a.m. the appellant Arjun armed with a gupti and the appellant Arun armed with a scythe, along with the acquitted accused Ashok Bhingardive came there. Since she was having headache, she was awake. The appellants started assaulting her husband Shankar with their weapons. She raised cries hearing which, her 11-year old daughter Kavita who was sleeping near by woke up, as also her husband's cousin Ashok. Along with her, they also saw the appellants assaulting Shankar.

The account furnished by Sushila P.W. 1 has also been corroborated by Kavita and Ashok. The latter was living in a hut situated opposite to that of Sushila.

10. The manner of incident as given out by these three eye witnesses is

corroborated by the nature of the ante mortem injuries found on the corpse of the deceased by the Autopsy Surgeon Dr. Khanolkar P.W. 5. As mentioned earlier, Dr. Khanolkar found 15 incised stab wounds, 9 incised wounds and 2 abrasions on the corpse of the deceased. It is common knowledge that incised stab wounds are attributable to pointed weapons like gupti and incised wounds to a sharp edged weapon like chopper or a scythe. The two abrasions appear to have been received on account of the impact of the deceased falling on the ground as a consequence of the assault made on him by the appellants.

11. It is significant to point out that all these three eye-witnesses are natural witnesses of the incident, Sushila and Kavita because the incident took place outside their hut and Shankar because his hut was situated opposite their hut. It should be borne in mind that nothing has been elicited from them in their cross-examination which would explain their false implication of the appellants. It is pertinent to point out that the place of the incident namely outside the hut of the deceased Shankar given out by these eye-witnesses is clinched by the circumstance that the next morning, the Investigating Officer recovered the bloodstained earth therefrom which was sent to the Chemical Analyst who found thereon, the blood of "B" group, namely the blood-group of the deceased.

12. So far as the question of the three witnesses recognising the appellants is concerned, it should be borne in mind that the appellants were known to them from prior to the incident and the assault on the deceased was not of a hit and run type, but a leisurely one wherein 26 injuries were inflicted on him. In other words, these witnesses had ample opportunity to recognise the appellants.

It is true that Sushila P.W. 1 and Kavita P.W. 2 have not deposed to any source of light but, it is common knowledge that known person can be recognised by their gait, timbre of their voice etc. even in the absence of any light and if any authority is needed for this proposition, it would be useful to peruse para 4 of AIR 1965 SC 714 Kripal Singh v. State of U.P.

We hasten to add that this is not a case where no source of light is alleged by the prosecution because, we find that in his evidence Ashok P.W. 3 stated that he saw the incident in the light of Jogani's building. We have gone through the cross-examination of Ashok and we find that no question was put to him which could dislodge his claim of having seen the incident in the said light.

13. Tremendous assurance is lent to the prosecution case by the circumstance that the F.I.R. of the incident wherein the appellants have been nominated and their roles stipulated, was lodged within one hour and 40 minutes of the incident taking place in-as-much as the incident took place on 1-10-1991 at 1.15 a.m. and the F.I.R. was lodged the same night at 2.55 a.m. by Sushila P.W. 1 widow of the deceased Shankar.

14. There can be no manner of doubt in view of the circumstance that the appellants committed the murder of the deceased in a pre-planned manner and inflicted a very large number of injuries on him which were accompanied by

massive internal damage that the offence committed by them would fall within the ambit of section 302 r/w/ 34 I.P.C.

15. For the said reasons, in our Judgment, the learned trial Judge acted correctly in convicting the appellants for offences punishable u/s 302 r/w 34 I.P.C. and section 37 r/w/ 135 of Bombay Police Act.

16. In the result, both these appeals are dismissed. The appellants are in jail and shall remain therein till they serve out their sentences.

17. Appeals dismissed.