
(2016) 01 BOM CK 0236

In the Bombay High Court

Case No : Criminal Appeal No. 843 of 2009 in Sessions Case No. 591 of 2007

Baijnath Hari Yadav Rajkumar

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 29-01-2016

Acts Referred:

Bombay Police Act, 1951 — Section 135, Section 37(1)
Penal Code, 1860 (IPC) — Section 302, Section 34

Citation : (2016) 01 BOM CK 0236

Hon'ble Judges : V.K. Tahilramani, Actg. C.J. and Dr. Shalini Phansalkar Joshi, J.

Bench : Division Bench

Advocate : Nasreen S.K. Ayubi, Advocate, for the Appellant; H.J. Dedia, A.P.P., for the Respondent

Final Decision : Dismissed

Judgement

V.K. Tahilramani, Actg. C.J.

1. The appellant (original accused no. 2) has preferred this appeal against the judgment and order dated 14/5/2009 passed by the learned Additional Sessions Judge, Greater Bombay in Sessions Case No. 591 of 2007. By the said judgment and order, the learned Sessions Judge convicted the appellant under Section 302 read with Section 34 of IPC and sentenced him to imprisonment for life and fine of Rs. 5,000/- in default simple imprisonment for one month.

2. The prosecution case briefly stated is as under:

The deceased Kailee was the wife of PW2 - Amarbahadur. They had three children. The elder two children were studying in a boarding school and the youngest child, i.e. PW11 - Kumar Dawa was residing with his mother Kailee and father Amarbahadur. Kailee was residing with her husband and son Kumar Dawa in Room No. 19 in Shankar Marwadi Chawl situated at Khetwadi, Mumbai. The said chawl was consisting of 2 floors and Room No. 19 was situated on the top floor, i.e. second floor, of the chawl. There were 5 rooms on the second floor of

the chawl. The room had a loft. Kailee used to sleep with her son Kumar Dawa in the loft. In the room below, Kailee was running a brothel with the help of three prostitutes, viz. PW8 - Pooja, PW9 - Rekha and one Rani. The appellant was the friend of Mohd. Hussain and the co-accused Pankaj Kumar. Mohd. Hussain was a juvenile on the date of the incident. The appellant along with Mohd. Hussain and Pankaj Kumar used to visit the brothel of Kailee as customers. Mohd. Hussain fell in love with Rani, who was one of the prostitutes in the brothel run by Kailee. Hence, on the date of the incident, i.e. 28/2/2007, Mohd. Hussain told Kailee that he wanted to marry Rani and he wanted to take Rani to his house. Thereupon, Kailee told Mohd. Hussain that she had spent Rs. 30,000/- on Rani and Mohd. Hussain should pay her (Kailee) Rs. 30,000/-, then he could take Rani with him and marry her. Thereafter Kailee along with her minor son went to the loft to sleep. Before going to the loft, she locked both the doors of the room from inside and kept the keys with her. Her husband PW12 - Amarbahadur went to sleep in the room below. At about 3.00 a.m., the appellant along with the co-accused Pankaj Kumar and juvenile Mohd. Hussain went to the loft. They assaulted Kailee with sharp weapons and caused her death. This was witnessed by PW11 - Kumar Dawa, who was the son of Kailee. Kumar Dawa raised hue and cry. Then persons in Room No. 19 as well as the adjoining rooms woke up. In the meanwhile, the appellant and the co-accused came down and tried to escape through the front door, but on finding locks on the doors, all the three accused went back to the loft, removed the mangalore tiles from the sloping roof of the loft and jumped down. The juvenile accused Mohd. Hussain and the co-accused Pankaj Kumar were injured and were found in lying position on the ground. However, the appellant, who had also sustained injury, tried to run and tried to hire taxi of PW5 - Akram. However, PW2 - Noor Mohd., who was residing in Room No. 18 in the very same chawl and who heard the hue and cry, woke up. He heard the sound of someone walking on the roof top which was made of mangalore tiles. Hence, he went downstairs. Noor Mohd. saw three persons on the roof top which was made of tiles. Hence, he rushed to the ground floor in order to catch the persons who were trying to run away. He saw two persons lying on the ground in injured condition. The third person (appellant) was seen running away towards a taxi. Hence, Noor Mohd. chased the appellant and caught him. At that time, some police personnel were passing by. Noor Mohd. gave call to them. Thereafter the appellant came to be apprehended. The police also apprehended the other two accused, who were found in injured condition, near Shankar Marwadi Chawl. PW12 - Amarbahadur lodged FIR. Thereafter investigation commenced. The dead body of Kailee was sent for post mortem. Thirteen injuries were found on her person. Out of which, 6 were incised wounds and 7 were stab injuries. Three incised wounds were found on the neck, one on the chest, one on the right elbow and one on the finger of left hand. Seven stab injuries found were - 1 on chest, 1 on umbilical region, 1 on iliac region, 2 on hypochondrium region and 2 on axillary region. The cause of death was found to be haemorrhage and shock due to multiple stab injuries (unnatural). After completion of investigation, the charge sheet came to be filed.

3. Charge came to be framed against the appellant (original accused no. 2) and the co-accused Pankaj Kumar, who was original accused no. 3. The charge was framed under Section 302 read with Section 34 of IPC and under Section 37(1) read with Section 135 of the Bombay Police Act. The case of Mohd. Hussain was separated as he was a juvenile in conflict with law on the date of the incident. The accused persons pleaded not guilty to the said charge and came to be tried. Their defence is that of total denial and false implication. After going through the evidence adduced in the case, the learned Sessions Judge convicted and sentenced the appellant and the co-accused Pankaj Kumar under Section 302 read with Section 34 of IPC. Hence, this appeal.

4. We have heard the learned counsel for the appellant and the learned A.P.P. for the State. We have carefully considered their submissions, the judgment and order passed by the learned Sessions Judge and the evidence in this case. After carefully considering the same, for the below mentioned reasons we are of the opinion that the judgment and order passed by the learned Sessions Judge does not call for any interference.

5. In support of its case, the prosecution has firstly relied upon the evidence of PW11 - Kumar Dawa, who was the son of deceased Kailee. Kumar Dawa was residing with his mother Kailee and father Amarbahadur in Shankar Marwadi Chawl. On the night of the incident, Kumar Dawa was sleeping with his mother in the loft of Room No. 19. He has stated that at night, out of the three persons, one had caught hold of legs of his mother, the other had caught hold of hands of his mother and the third person stabbed his mother with a knife.

6. The learned counsel for the appellant submitted that Kumar Dawa was a minor at the time of the incident and he is a tutored witness which is seen from the fact that he has stated that the police had informed that the accused had killed his mother and hence he has stated so. However, even if we exclude the evidence of PW11 - Kumar Dawa from consideration, we find that there is sufficient evidence to show that the appellant is involved in the murder of Kailee. In this connection, we would like to advert to the evidence of PW12 - Amarbahadur, PW2 - Noor Mohd., PW5 - Akram, PW7 - Vilas and PW8 - Pooja.

7. PW12 - Amarbahadur was the husband of deceased Kailee. He was residing in Shankar Marwadi Chawl along with his wife Kailee and son PW11 - Kumar Dawa. He has stated that his wife Kailee was running a brothel with the help of three prostitutes, i.e. PW8 - Pooja, PW9 - Rekha and one Rani. The appellant along with the juvenile accused Mohd. Hussain and the co-accused Pankaj Kumar had visited the brothel for three days continuously prior to the date of the incident. The incident occurred on the night between 27/2/2007 and 28/2/2007. On 27/2/2007 at about 11.00 p.m., the appellant along with Mohd. Hussain and Pankaj Kumar had come to their room. He stated that Mohd. Hussain was having a love affair with Rani, who was one of the prostitutes in the brothel of Kailee. Mohd. Hussain told Kailee that he wanted to marry Rani and wanted to take Rani to his house. Thereupon, Kailee informed Mohd. Hussain that she had spent Rs.

30,000/- on Rani and Mohd. Hussain should pay the same and then he could take Rani with him. Thereafter Kailee along with her son PW11 - Kumar Dawa went to sleep on the loft. The evidence of Amarbahadur shows that on the wooden and grill door locks were put from inside and the keys of the same were with Kailee. Amarbahadur had stated that at about 3.30 a.m. his son Kumar Dawa came down weeping from the loft and informed him that his mother was killed. Then Amarbahadur went to the loft. At that time, he saw the appellant there armed with a knife and co-accused Pankaj Kumar was armed with a chopper. Amarbahadur started shouting. Then all the accused came down into Room No. 19 from the loft. They tried to run away. However, as the wooden plank door and the grill door were locked from inside, the said persons could not run away from the room. Thereafter all the accused went back to the loft, broke mangalore tiles on the roof and jumped down from the roof.

8. The evidence of PW2 - Noor Mohd. shows that he was residing in Room No. 18 in Shankar Marwadi Chawl since long. He has stated that one Kailee was residing in Room No. 19 which was adjoining his room. About 3-4 ladies were residing with Kailee. On 28/2/2007 in the night some time after 2.00 a.m., he heard cry of a lady. The cry was coming from Room No. 19. He woke up because of the cry. Then he heard the sound of somebody walking on the roof top which was made of tiles. Hence, he immediately went downstairs. When he went downstairs, he saw three persons running over the roof top made of tiles. Out of those three persons, he has identified one of them as the appellant. Noor Mohd. then rushed towards the persons in order to catch them. He saw that two of the persons fell down in injured condition on the ground and the third person (appellant) was running away towards taxi. Noor Mohd. chased the person (appellant) and caught him. In the meanwhile, police personnel were passing by. Therefore, Noor Mohd. gave a call to them. Noor Mohd. has identified the appellant as the same person who was trying to run away in the taxi.

9. PW5 - Akram was the taxi driver whose taxi the appellant was trying to hire. Akram has stated that on 28/2/2007 at about 2.30 a.m., he had parked his taxi at Falkland Road and was waiting for a passenger. At about 2.45 - 3.00 a.m., one person came running. That person informed that his friend is lying on the road and he wanted to take his friend to Nagpada. Hence, Akram reversed his taxi. At that time some persons arrived and apprehended the person who was going to hire his taxi. While reversing, Akram saw a person lying on the road. Akram has identified the appellant as the same person who was going to hire his taxi.

10. PW7 - Vilas was a police constable attached to V.P. Road Police Station at the relevant time. On 27/2/2007, he was on patrolling duty from 8.00 p.m. till 8.00 a.m. the next day. On 28/2/2007 at about 3.45 p.m., they reached Khambata Lane. They heard commotion and hence went there. They noticed one person running away and another person was chasing him. The first person was injured and he was searching for a taxi. They then accosted the injured person and inquired with the person chasing him. That person informed them that the

injured person had jumped from the roof top and two other persons were lying on the spot. PW.7 - Vilas identified the appellant as the same person who was running and trying to catch a taxi.

11. PW8 - Pooja was one of the prostitutes who was working in the brothel run by Kailee. She has stated that the deceased Kailee was running a brothel with her help and the help of some other prostitutes, i.e. Rekha and Rani. She has stated that on 28/2/2007, three persons had come to their room for sexual intercourse. The appellant was with her. One of the persons went with Rani. Then the person, who was with Rani, told Kailee that he wanted to marry Rani as he was in love with her. Kailee then informed that person (juvenile accused) that an amount of Rs. 30,000/- was due from Rani and if he paid that amount to Kailee, then Kailee would allow Rani to go along with him. Then the appellant and co-accused Pankaj Kumar went to Kailee and tried to convince her to allow Rani to marry with the juvenile accused. However, Kailee did not accede to their request. She insisted that Rs. 30,000/- should be paid and then she would allow the juvenile accused to take Rani with her. Thereafter Kailee with her minor son went to the loft to sleep. The husband of Kailee, i.e. PW12 - Amarbahadur, slept in the room. Then PW8 - Pooja, Rekha and Rani went to sleep. All the accused persons were in the room at that time. At about 3.30 a.m., Pooja and others heard a noise. Hence, they along with PW12 - Amarbahadur went to the loft where the deceased was sleeping. Then Pooja saw three accused persons jumping from the loft. The person residing in the adjoining room, who had heard the noise, was knocking at the door of their room, (i.e. Room No. 19). Then all the three accused persons again went to the loft. They damaged the cement roof of the loft and ran away from the roof top. Rekha and others noticed injuries on the neck and chest of Kailee and Kailee was lying in a pool of blood.

12. Thus, the evidence of PW12 - Amarbahadur, PW2 - Noor Mohd., PW5 - Akram Fazal, PW7 - Vilas and PW8 Pooja taken together establishes that the appellant was one of the persons who was involved in the murder of Kailee. In view of their evidence, we do not find it necessary to advert to the other evidence. In our opinion, the evidence proves beyond reasonable doubt that the appellant was involved in the murder of Kailee. Thus, we find no merit in the appeal, hence we pass the following order:

- (i) The appeal is dismissed.
- (ii) Office to communicate this order to the appellant through the concerned jail authorities.
- (iii) We quantify legal fees to be paid by the High Court Legal Services Committee to the appointed advocate Mrs. Nasreen S.K. Ayubi at Rs. 5,000/-.