
(2012) 12 BOM CK 0147
In the Bombay High Court
Case No : Criminal Appeal 217 of 2005

Dalpatsiha Ganeshsiha Rajput

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 03-12-2012

Acts Referred:

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

Citation : (2013) 1 ABR 667 : (2013) BomCR(Cri) 1

Hon'ble Judges : V.K. Tahilramani, J;A.R. Joshi, J

Bench : Division Bench

Advocate : Sonia Miskin, for the Appellant; P.P. Bhosale, App, for the Respondent

Final Decision : Dismissed

Judgement

A.R. Joshi, J.—Heard rival arguments on this Criminal Appeal preferred by the appellant/orig. accused challenging the judgment and order of conviction dated 9th August, 2004 passed by the 1st Ad hoc Additional Sessions Judge, Nashik in Sessions Case No. 19 of 2004. By the said judgment and order, the appellant/accused was convicted for the offence punishable u/s 302 of IPC and was sentenced to suffer imprisonment for life and to pay fine of Rs. 500/- in default to suffer further RI for two months. He was acquitted for the offence punishable u/s 135 of the Bombay Police Act. The case of the prosecution, in nutshell, is as under:

The appellant/accused was working in one hotel by name "Hotel Panchavati Yatri" at Nashik as a waiter. He left the job on 6th October, 2003. The victim woman Pushpa Jadhav was also working in the same hotel as a maid servant. As such, she was in acquaintance with the appellant/accused as both were working in the same hotel as servants. Though the appellant/accused left the service, victim Pushpa Jadhav continued to work in the said hotel. The actual incident of assault occurred on the night of 18th October, 2003. On that night, one Dwarkabai Gaikwad another maidservant from the said hotel left the hotel premises after

the work was over. She was accompanied by victim Pushpa and also other two maid-servants. All the four women came near one Agarbatti Factory. It was at about 11:00 p.m. or so. At that place, Pushpa departed from the group and was alone proceeding on the road. Other three women including PW 4 Dwarkabai took auto and went for their homes.

2. According to the case of prosecution when victim Pushpa Jadhav was alone proceeding on the road, the appellant/accused accosted and assaulted her by means of a sickle causing severe bleeding injuries and also probably causing instantaneous death. There were about 12 incised wounds inflicted on her person and mainly in the area of abdomen and chest and also on hands. After the assault, victim Pushpa fell on the ground in a pool of blood and that time appellant/accused started running away from the spot. At this stage, one witness PW 6 Bhavdhya alias Sanjay Sonawane was present and witnessed the accused running away from the spot. He along with one Mahindra Zute chased the appellant and caught him. Prior to that when the appellant/accused was running away, he threw some article below the basement of one tower situated in that area. Apparently, from the basement of said tower subsequently a sickle was recovered during the investigation in which PW 1 panch Prakash Jadhav took part. In fact, said sickle was recovered as per memorandum statement of the appellant/accused.

3. When the appellant/accused was accosted while running away and when PW 6 Bhavdya alias Sanjay Sonawane was taking him in a auto rickshaw to the police station with the help of Mahindra Zute, one police jeep arrived at the scene of offence and immediately the appellant/accused was given in custody of the police. One police head constable Ashok Tayade (PW 7) was present in the jeep and he took charge of the accused and took him to the police station.

4. According to further case of the prosecution, at the police station the appellant/accused gave a confessional statement stating that he had assaulted victim Pushpa out of his one-sided love affair as she has refused to marry him. Accordingly his statement was recorded and it was treated as FIR regarding the assault on victim Pushpa and matter was taken over for investigation on knowing commission of cognizable offence through the statement given by the appellant/accused.

5. The appellant/accused was put under arrest during the investigation of the matter as it was apparent that he was the assailant. Clothes on his person were taken charge of. During his search, a photograph of the victim was found. It was seized. Panchnama was drawn in which PW 2 Rafiq Deshmukh took part. However, this witness did not support the case of the prosecution and turned hostile.

6. During investigation statements of various witnesses were recorded. PW 5 one Gulam Khan was enquired and it was revealed that from his shop about four days prior to the incident, the appellant/accused had purchased a sickle which was

subsequently recovered at the instance of appellant/accused from the base of a tower near the area of scene of offence. On completion of investigation and obtaining Chemical Analyzer's report, charge-sheet was filed against the appellant and matter was tried before the 1st Ad hoc Additional Sessions Judge, Nashik and ended in conviction, which is challenged in the present appeal.

7. Prior to discussing the arguments advanced on behalf of the appellant/accused, certain factual position is required to be narrated in order to have proper perspective of the matter and in order to ascertain whether the material brought before the trial Court was sufficient enough to bring home the guilt of the appellant/accused for the offence of murder. Said factual position is as under:

(i) Appellant/accused and victim Pushpa Jadhav were working as servants in Hotel Panchavati Yatri. This is substantiated by the evidence of PW 3 one Anant Rikame, a Store Keeper in the said hotel. This fact is also substantiated by another witness PW 4 Dwarkabai Gaikwad.

(ii) Appellant/accused left the job in Hotel Panchavati Yatri some time on 6th October, 2003. However, victim Pushpa Jadhav continued to work.

(iii) On the night of the incident after the working hours, victim Pushpa Jadhav left the hotel premises along with PW 4 Dwarkabai Gaikwad and two other maidservants and they departed near the place of offence i.e. near one Agarbatti Factory.

(iv) PW 6 Bhavdhya alias Sanjay Sonawane witnessed the later part of the entire incident. He witnessed that victim Pushpa was shouting for help and then fell on the ground in an injured condition and the appellant/accused was running from the spot and threw some article below the basement of a tower. Appellant/accused was then accosted by PW 6 Bhavdhya and one more person by name Mahindra Zute.

(v) PW 7 Police Head Constable Ashok Tayade arrived on the spot in a police jeep when appellant/accused was being taken to police station by PW 6 Bhavdhya and Mahindra Zute. Appellant/accused was then taken in custody and was brought to the police station and his statement was recorded by police officer Anilkumar Jagtap (PW 12).

(vi) PW 9 Dr. Bamble conducted the postmortem on the dead body of Pushpa and found that all the said injuries were ante-mortem and also opined that such injuries were possible by article Koyata which was seized at the instance of the appellant/accused.

(vii) The sickle which was found at the instance of the appellant/accused was having blood stains of "O" group. The blood group of victim is also "O", whereas blood group of appellant/accused is "B".

8. Now coming to the argument advanced on behalf of the appellant/accused, it must be mentioned that there was no much force in the said argument though it

is tried to argue that the entire case of prosecution is based only on circumstantial evidence and that there is no eye-witness in the strict sense of the meaning so far as actual assault on the victim is concerned. It is further submitted that the appellant/accused had independently approached the concerned police officer and re-reported to the police regarding his knowledge as to victim found in an injured condition on the road while he was passing by the road. When this argument was canvassed before us, it was also submitted by learned appointed Advocate for the appellant that the factum of appellant/accused working in "Hotel Panchavati Yatri" and also the factum of victim Pushpa Jadhav working in the same hotel has not been denied. However, it is still argued that there is no material brought on record to show that the appellant/accused had desire to marry victim Pushpa and on her alleged refusal he has done away with her by assaulting with the help of a sickle. It is also argued that the substantive evidence of PW 5 Gulam Khan do not inspire confidence inasmuch as it was not possible for the said witness to critically remember the appellant/accused as one of his customers for purchase of a sickle. This is more so in view of daily 40 to 50 customers visiting his shop and that the sickle like Article-1 also available easily in other shops, further argued.

9. Though there is some substance in this argument regarding quality of substantive evidence of PW 5 Gulam Khan, still in absence of such substantive evidence and also even if PW 2 panch Rafiq Deshmukh not supported the case of prosecution, there is ample material in order to connect the appellant/accused with the offence of murder of victim Pushpa.

10. In our considered view, the substantive evidence of PW 6 Bhavdhya alias Sanjay Sonawane coupled with corroboration by way of evidence of PW 7 Police Head Constable Tayade, PW 8 ASI Ashok Fale and Police Officer Anilkumar Jagtap (PW 12), is sufficient to point towards appellant/accused only, as the assailant. Moreover on the another aspect also there is corroboration through the evidence of PW 6 Bhavdhya alias Sanjay Sonawane, inasmuch as, according to him prior to accosting of appellant/accused, appellant/accused had threw some article near the base of a tower near the spot of offence and from the same place subsequently under the recovery panchnama (Exh. 24), a sickle (Article) was found having blood stains of "O" blood group.

11. In any way, considering the overwhelming material available on record, it cannot be said that the learned Sessions Judge had erred in coming to the conclusion of guilt of the appellant/accused. In other words, there is nothing to interfere with the judgment and order, and hence there is no merit in the present appeal. Accordingly, the same is dismissed and disposed of. This judgment and order be communicated to the appellant who is presently lodged in jail, through concerned jail authorities.