
(2014) 10 BOM CK 0035
In the Bombay High Court
Case No : Criminal Appeal No. 1198 of 2013

Jaisingh Dhondiram Karpe	Vs	APPELLANT
The State of Maharashtra		RESPONDENT

Date of Decision : 28-10-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302

Citation : (2015) 1 BomCR(Cri) 21

Hon'ble Judges : P.V. Hardas, J; G.S. Kulkarni, J

Bench : Division Bench

Advocate : I.M. Koparkar, Advocate for the Appellant; U.V. Kejriwal APP, Advocate for the Respondent

Judgement

P.V. Hardas, J

1. The Appellant who stands convicted for the offence punishable under section 302 of the Indian Penal Code and sentenced to imprisonment for life by the Additional Sessions Judge, Court Room No. 36, City Civil and Sessions Court, Greater Bombay by Judgment dated 26th October, 2005 in Sessions Case No. 580 of 2002 by this Appeal, questions the correctness of his conviction and sentence.

2. Though the Judgment convicting and sentencing the Appellant is dated 26th October, 2005 the present Appeal was filed by the Appellant after a delay of more than 8 years. A Division Bench of this Court therefore, while admitting the Appeal on 24th October, 2013 directed listing of the Appeal by dispensing with the preparation of the Paper Book. This Court directed that the Appeal be listed for Final hearing in the week commencing from 9th December, 2013. In the light of the fact that the Appeal filed by the Appellant was filed after a delay of more than 8 years, hearing of this Appeal was expedited and though this Appeal is of the year 2014, we have heard and decided this Appeal.

3. Facts in brief as are necessary for decision of this Appeal may briefly be stated thus:

PW 4 PSI Sanjay Gaikwad who on 18th March, 2002 attached to Samta Nagar police station was informed by one Vanita Gaonkar that the deceased Parmanand Gaonkar had been assaulted. On receiving the information PW 4 PSI Sanjay Gaikwad immediately rushed to the scene of the incident and noticed deceased Parmanand @ Nanda lying unconscious. The injured Parmanand was sent to Bhagwati Hospital for treatment and was declared dead on examination. Statement of PW 1 Anil Gaonkar was recorded at Exhibit 11. On the basis of the statement of PW 1 Anil Gaonkar, an offence was registered. The inquest panchanama of the dead body of the deceased Parmanand was drawn at Exhibit 16. Under the said panchanama, the clothes of the deceased Parmanand were also seized. Further investigation was thereafter, entrusted to PW 5 - P.I Aamsiddha Narote.

4. PW 5 P.I. Aamsiddha Narote who was also attached to Samta Nagar police station was entrusted with the investigation. He proceeded to the scene of the incident and drew the scene of the incident under a panchanama at Exhibit 21. From the scene of the incident, samples of ordinary mud and sample of blood mixed mud were drawn and seized. The Appellant was arrested and his clothes were seized. Statement of the witnesses were recorded and the Appellant was referred for medical examination and for collecting his blood sample. The seized property was referred to the Chemical Analyser. Further to the completion of the investigation, a charge sheet against the Appellant was submitted.

5. Post mortem examination on the dead body of the deceased Parmanand was performed by the Medical officer of the Cooper Post Mortem Centre, Juhu, Mumbai. The said post mortem Report was admitted by the Accused and was therefore, exhibited at Exhibit 18. Column 17 of the post mortem Report indicates that the deceased had sustained 5 external injuries. On internal examination, hematoma of skull was present. Fracture of frontal bone was noticed. Depressed fracture was also noticed. Extradural haemotomma was also noticed. The Medical Officer therefore, opined that the deceased had died due to haemorrhage and shock due to head injury.

6. On the case being committed to the Court of Sessions, the trial Court framed charge against the Appellant for the offence punishable under section 302 of the Indian Penal Code. The Appellant denied his guilt and claimed to be tried. The prosecution in support of its case examined 5 witnesses. The trial Court principally relied upon the testimony of PW 3 Ms. Surekha Mungekar who was the sole eyewitness to the incident.

7. We have heard Mrs. Koparkar for the Appellant and the learned APP and in order to effectively deal with the submissions advanced before us by the learned counsel for the parties, it would be useful to refer to the evidence of the prosecution witnesses.

8. Prosecution had examined PW 1 Anil Gaonkar a nephew of the deceased Parmanand. According to PW 1 Anil Gaonkar, on the day of the incident i.e. 18th March, 2002 at about 2.15 p.m. he was informed by PW 2 Yeshwant Jadhav that deceased was assaulted by the Appellant. On being informed, PW 1 Anil Gaonkar rushed to the scene of the incident and noticed a crowd had gathered there. He also noticed the Accused who was present there holding a wooden plank. The Accused was about to assault the deceased Parmanand. PW 1 Anil Gaonkar also noticed that his uncle Parmanand was lying on the ground having sustained an injury to his head. The Accused thereafter fled towards Malad signal and PW 1 Anil Gaonkar chased and apprehended him and brought him back to the scene of the incident in an auto rickshaw. Meanwhile, the police had also arrived and the Appellant was then handed over to the police. Deceased Parmanand who had been shifted to Bhagwati Hospital was declared dead on examination by the Medical Officer. PW 1 Anil Gaonkar further deposed that his complaint was lodged at Exhibit 11.

9. In cross examination, he has admitted that on the day of the incident he was unemployed. He has further admitted that he had been operated prior to the incident as he was unable to walk. He however, clarified that after surgery he was able to walk. He has denied the suggestion that the Appellant had in fact saved deceased Parmanand by snatching the wooden plank from the hands of the assailant.

10. In the statement under section 313 of the Code of Criminal Procedure, 1973, the Appellant has admitted the correctness of the deposition of PW 1 Anil Gaonkar. The Appellant has also admitted the incident which is deposed to by PW 1 Anil Gaonkar.

11. Though the prosecution had examined PW 2 Yeshwant Jadhav, he did not support the prosecution and was declared hostile. PW 2 Yeshwant Jadhav had been examined as an eyewitness but, since he did not support the prosecution, evidence of this witness is of no assistance to the prosecution.

12. The prosecution has examined PW 3 - Ms. Surekha Mungekar an eye witness to the incident who deposed that on 18th March, 2002 at about 2.15 p.m. she had gone to the public water tap for filling water. She noticed the Appellant assaulting deceased Nanda @ Parmanand by a wooden staff which was a part of the door frame. She therefore, informed the incident to the mother of deceased Nanda who also rushed to the scene of the incident. The sister-in-law of Nanda thereafter, went to the police station. In cross examination, she has admitted that she had stated in her previous statement that she had witnessed the Accused assaulting deceased Nanda. She has denied the suggestion that she had only informed the police that she had seen Nanda lying on the ground. She has further admitted that the sister in law of Nanda had also arrived immediately at the scene of the incident.

13. It is true that the conviction of an Accused can be based on the testimony of

a solitary witness. However, the testimony of the sole witness should be of sterling quality which should inspire the confidence of the Court for its implicit acceptance. In the present case, in the light of the cryptic and ineffective cross examination, we find that implicit reliance can be placed on the testimony of PW 3 - Ms.Surekha Munekar who is an eyewitness to the incident. Since we find that implicit reliance can be placed on the testimony of P W 3 - Ms.Surekha Munekar, we do not consider it necessary to look for any other independent corroboration. Even the evidence of PW 1 Anil Gaonkar refers to the presence of the Appellant at the scene of the incident who was about to assault deceased Nanda. As pointed out by us above, the Appellant in his statement under section 313 of the Code of Criminal Procedure, 1973 has admitted the correctness of the deposition of PW 1 Anil Gaonkar. The Appellant has also admitted the incident as deposed to by PW 3 Ms. Surekha Munekar. The Appellant vide Question No. 12 was questioned about the deposition of PW 3 - Ms.Surekha Munekar and about the incident testified by her. The Appellant had admitted the correctness of the testimony of PW 3 Ms.Surekha Munekar vis-?-vis the incident. In that light of the matter, therefore presence of PW 3 - Ms.Surekha Munekar at the scene of the incident cannot be doubted. The cross examination does not in any manner affect the credibility of PW 3 - Ms.Surekha Munekar. We therefore, unhesitantly place implicit reliance on PW 3 - Ms.Surekha Munekar.

14. In the light of that, therefore, in our opinion the prosecution has proved the offence against the Appellant beyond reasonable doubt and hence no interference is called for in the present Appeal.

15. We accordingly dismiss this Appeal confirming the conviction and sentence of the Appellant.