
(2015) 08 BOM CK 0248

In the Bombay High Court

Case No : Criminal Appeal Nos. 174 and 175 of 2013

Mangesh Kisanrao Dahe and Others

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 20-08-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2015) 08 BOM CK 0248

Hon'ble Judges : B.R. Gavai, J;P.B. Varale, J

Bench : Division Bench

Advocate : S.D. Chande, for the Appellant; S.M. Ghodeswar, APP, Advocates for the Respondent

Final Decision : Allowed

Judgement

B.R. Gavai, J—The appellants have approached this Court, being aggrieved by the Judgment and order passed by the learned Additional Sessions Judge, Achalpur, dated 10th December, 2012, in Sessions Trial No. 100 of 2010, thereby convicting both the appellants for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code and sentencing them to suffer R.I. for life and to pay fine of Rs. 2000/- each and in default to suffer further imprisonment for one year each.

2. The prosecution case, as could be gathered from the material placed on record, is thus:-

That on 26th June, 2010, a marriage in the family of the first informant Purushottam (P.W.3) was being solemnized at village Sawalapur. Purushottam, who is the resident of Takarkheda, had come along with deceased Shankar for attending the said marriage. In the said marriage, accused persons along with juvenile in conflict with law Pravin Dahe had also come. Accused no. 1 Mangesh and Pravin Dahe are the resident of village Borgaon, whereas accused Dnyaneshwar is the resident of village Takarkheda.

3. It is the prosecution case that on account of dash between deceased Shankar and accused Mangesh, there was altercation between them. However, that was pacified. Thereafter, accused went away. However, they caught the deceased outside the house of P.W.6 Narayan. Other two accused caught hold the deceased and accused Mangesh gave a blow of knife on the chest of the deceased causing grievous injury to his heart. As a result of the said injury, deceased succumbed on the spot. Accused were held by the villagers and information was given to the Police by P.W.3 Purushottam. On the basis of the information given by him, oral report below Exh.39 was registered. Printed F.I.R. was registered below Exh.40. On the basis of the First Information Report, investigation was carried out by Investigating Officer (P.W.12) Sadanand Mankar. At the conclusion of the investigation, the Investigating Officer submitted the charge sheet against all the three accused in the Court of Judicial Magistrate, First Class, Chandur Bazar. The trial of the Juvenile in conflict with law was separated. In so far as the present appellants are concerned, since the case was exclusively triable by the Sessions Judge, the same was committed to the Sessions Court, Achalpur. The charges were framed below Exh. 10. The accused pleaded not guilty and claimed to be tried. At the conclusion of the trial, the learned trial Court convicted the appellants as aforesaid. Being aggrieved thereby, the present appeal.

4. Mr. Chande, the learned counsel appearing on behalf of appellant Mangesh Dahe, submits that the evidence of the eye witnesses is totally unreliable. He submits that there are material contradictions and omissions in the statements of the witnesses, which go to the roots of the credibility of the said witnesses. He further submits that the evidence of the witnesses is totally inconsistent with each other. The learned counsel submits that in any case the prosecution has failed to prove the case beyond reasonable doubt.

5. Mr. Yash Maheshwari, the learned counsel appearing on behalf of the appellant Dnyaneshwar, submits that in so far as the said appellant Dnyaneshwar is concerned, there is absolutely no material to connect the said appellant with the crime in question. He submits that neither the name of the appellant Dnyaneshwar is mentioned in the First Information Report nor there is any credible evidence establishing his complicity with the crime in question. The learned counsel submits that the appeal against the appellant Dnyaneshwar, therefore, deserves to be allowed.

6. Per contra, Mr. S.M. Ghodeswar, learned A.P.P. submits that merely because there are some inconsistencies in the evidence of the witnesses, cannot be a ground to discard their testimony. The learned A.P.P. submits that the witnesses are rustic villagers and minor discrepancies here and there are bound to be in their evidence. He submits that the material aspect, that is, assault by knife by Mangesh and caught holding the deceased by accused Dnyaneshwar is concerned, all the witnesses are consistent. The learned A.P.P. further submits that the circumstantial evidence in the nature to finding of blood of "A group" which is the blood group of the deceased on the knife seized on the spot also

supports the prosecution case. The learned APP, therefore, submits that the appeals deserve to be dismissed.

7. With the assistance of the learned APP and the learned counsel for the appellants, we have scrutinized the entire evidence.

8. The main evidence would be the deposition of P.W.3 Purushottam the first informant, P.W.4 Nanda, P.W. 6 Narayan, P.W.11 Suvarna and P.W. 2 Mahananda Police Patil.

9. The learned trial Court has basically relied on the evidence of P.W.3 Purushottam for convicting the accused Mangesh and the evidence of P.W.3 Purushottam and P.W. 4 Nanda for convicting the accused Dnyaneshwar. However, we will scrutinize the evidence of other witnesses also prior to considering the evidence of these two witnesses.

10. Insofar as P.W.2 Mahananda is concerned, she is a Police Patil of the village. In her deposition, she narrates about she attending the wedding and returning home. She states that after some time villagers came shouting from Bhoipura side, that quarrel was going on in Bhoipura. She states that on going there she saw the huge crowd in front of the house of Pandurang Nandane. She states that when she went to the spot, she saw the corpse of Shankar Amzare. She states that she has noticed bleeding injury on the chest of Shankar and his clothes were smeared with blood. She further states that accused Mangesh and Pravin were trying to run away from that spot. However, people gathered had made both of them to sit in the auto-rickshaw. It could, thus, be seen that the said witness is not an eye witness to the incident. As such her evidence would be of no use to the prosecution case. In any case, she does not implicate accused Dnyaneshwar.

11. Insofar as the accused P.W.6 Narayan is concerned, the incident is alleged to have taken place outside to his house. He states in his evidence that at the time of incident he was lying on the bed in his home. He came out of the house after he heard noise of quarrel. He saw the deceased lying on the ground and accused Mangesh was present near him having knife in his hand. He states that he also saw P.W.4 Nanda, P.W.11 Suvarana and Pravin there. He states Shankar was dealt with knife blow by Mangesh on the chest and blood was oozing from his chest. He further states that he went to hold the knife which was in the hand of Mangesh. However, he was given push and he sustained fall on the ground. He also states that in that incident he also received cut of knife on his left wrist. The Investigating Officer has admitted that the said witness was sent for medical examination. However, the medical report of the said witness is not placed on record. This witness in his cross examination though admitted that on the day of the incident, the police were present in the village, he did not disclose the incident to the police on that day. He states that on that day, the statements of his family members except Suvarna were not recorded. He further admits in his cross examination that though he was interrogated on 26th he did not disclose the incident. Insofar as his statement that when he went outside, Shankar was

lying and Mangesh was standing there having knife in his hand is concerned, same is by way of omission. His statement that when he went there, Suvarna was also there, is also by way of omission. There are also other contradictions in his evidence.

12. Insofar as P.W.11 Suvarna is concerned, she states that on the day of incident, she had gone to attend the marriage of her cousin. She further states that near the house of her father, there was a quarrel going on in between Mangesh and Shankar. She states that her father and sister went there to separate both and Mangesh dealt blow of knife on the chest of Shankar. On receiving blow of knife, Shankar came to be fallen on that place only. She states that Mangesh tried to run away but he was caught hold by her and her father and others. In her cross examination she has admitted that, her statement that when incident occurred she was present in the house of her father is by way of omission. She has stated in her evidence that when she reached the house of her father, Nanda was present, she saw presence of her father as well as that of Nanda and Shankar was lying in the injured condition. Her statement that in front of her father's house quarrel between Shankar and Mangesh was there and her father and sister went there to rescue and Mangesh dealt blow by knife, is also by way of omission. Insofar as accused no. 2 Dnyaneshwar is concerned she has admitted she does not know him since he is not from their village.

13. P.W. 4 Nanda is a witness, on whose evidence, the learned trial Judge heavily relied for convicting both the appellants. In her evidence she has stated that Dnyaneshwar, Mangesh and Pravin were assaulting Shankar by fist and kicks. Dnyaneshwar and Pravin caught hold Shankar and Mangesh dealt knife blow in his chest. She came out of house and was about to rescue them. However, Mangesh gave her push. She stated that Shankar called water from her and she gave him the same. After her offering water to Shankar, he took breath deep and died there. She states that she also sustained fall on the ground. Mangesh threw knife in front of her house. Pravin, Mangesh and Dnyaneshwar tried to run away from there. She has categorically admitted in her evidence that on the day of the incident, when police were present in front of her house, she did not give any information to the police. She also states that for the first time Purushottam gave information to the police of the incident. She states that the statements were recorded on 27th and at that time her father, brother, maternal uncle and his wife were present. She categorically admits that she knows that Mangesh is a resident of Borgaon. However, prior to the incident she had never met with Mangesh Dahe. She further admits that amongst the assailants, Mangesh Dahe was there and was made known to her by her father, maternal uncle and accompanying persons. She further states that when she went inside the house, she heard shouts of some persons and thereafter she went to awaken her father. Thereafter, she came out of the house to see as to what had happened. She states that on seeing incident, she shouted and surrounding people gathered. She further admits that amongst the persons gathered, her father, Satish and Purushottam were there. There are certain omissions also in her evidence.

Insofar as accused no. 2 Dnyaneshwar is concerned, she categorically admits that she was not on visiting terms with Dnyaneshwar and had no acquaintance with him. It could, thus, be seen that there are material contradictions and inconsistencies in the evidence of P.W.4 Nanda, P.W.6 Narayan and P.W.11 Suvarna. P.W.4 Nanda and P.W.11 Suvarna are the daughters of P.W.6 Narayan. Apart from the fact that there are various contradictions and omissions in their evidence, whereas P.W.11 Suvarna and P.W.6 Narayan do not at all implicate accused Dnyaneshwar. P.W.4 Nanda clearly implicates him. However, she has admitted that prior to the incident she had never met Mangesh and she was not also knowing Dnyaneshwar. If she was not knowing the accused, then the question arises as to how she has named the same. However, she has herself answered the same in her cross examination. She has categorically admitted that her father and other relatives asked her to name these persons. From the tenor of the evidence of all these witnesses, it cannot be reliably believed that these witnesses have witnessed the incident. P.W.4 Nanda and P.W.6 Narayan have admitted that though the police were present in their village near their house they have not given information to the police. The narrations regarding P.W.4 Nanda and P.W.6 Narayan's making an attempt to separate the deceased and appellant Mangesh, are also by way of omissions.

14. It is pertinent to note that P.W.11 Suvarna, whose statement was recorded on the very same day of the incident, though claims to know the name of the accused Mangesh, perusal of her evidence shows that in her evidence she has admitted that while giving statement she has referred to one person having fatty appearance who dealt blow of knife on the chest of other person. If the statement of P.W.11 Suvarna is to be accepted that accused Mangesh is her cousin, then failure on her part to implicate the accused on the very first opportunity casts serious doubt on the prosecution case. The possibility of the present appellants being subsequently implicated, therefore, cannot be ruled out.

15. As already discussed above, P.W.4 Nanda has also admitted that prior to the date of the incident neither she had met with Mangesh nor with Dnyaneshwar. She has also admitted that the accused Mangesh was made known to her by her father, maternal uncle and accompanied persons. Insofar as the accused Dnyaneshwar is concerned, we find that there is absolutely no evidence, on the basis of which, conviction could have been rested. We find that the conviction is not solely on the basis of the evidence of these witnesses but is only on the basis of conjectures and surmises.

16. That leaves us to star witness i.e. P.W.3 Purushottam. It can be seen that the First Information Report is lodged immediately by P.W.3 Purushottam. In the First Information Report, he has categorically named Mangesh and Pravin. However, he has admitted that in the statement which was recorded by police on 27th he has stated before the police that on the day of incident beside Dnyaneshwar Parise he was not knowing other two persons. He has admitted that Mangesh Dahe was not the resident of Takarkheda. If he was not the resident of

Takarkheda and resident of some other village and if said witness was not knowing other two, then question arises as to how names of these two persons are named in the First Information Report and the name of Dnyaneshwar is not named. In his cross examination though he has stated that the report is in his hand writing and bears his signature and by way improvement he has stated that it is reduced into writing by police in the police station. It is further to be noted that in his statement before the police on 27th he has not disclosed about first incident regarding altercation between Mangesh and Shankar on account of dash. We find that the entire prosecution version cannot be said free from doubt. If the first informant, on the second day, states that he was not knowing Mangesh and Pravin, then question arises as to how these two names and specific role to them appeared in the first information report. We find that this serious lacuna is not at all explained by the Investigating Agency. We find that the prosecution has failed to prove the case beyond reasonable doubt.

17. Apart from other four witnesses" whose testimonies, for the reasons hereinabove, we have discarded insofar as the accused Mangesh. Then, the eye witness, who implicates, must know him. We find that said evidence cannot be said to be trustworthy and reliable.

18. That leaves us with the circumstance regarding finding of blood stains on the knife. Firstly, the knife is seized from the spot. Secondly, the investigating officer has admitted that no sealing was done after seizure before it being sent to Chemical Analyser. In that view, it also cannot be said that this circumstance is proved beyond reasonable doubt. We find that the prosecution has utterly failed to prove the case beyond reasonable doubt. Insofar as accused Dnyaneshwar is concerned, there is absolutely no material. Insofar as accused Mangesh is concerned, we find that he is entitled to the benefit of doubt. Hence, the following order.

Order

Both the Criminal Appeals are allowed. The Judgment and order dated 10th December, 2012 passed by the Additional Sessions Judge, Achalpur in Sessions Trial No. 100 of 2010 thereby convicting and sentencing the appellants/accused is set aside. The appellants are directed to be released forthwith, if not required in any other case.