

(2020) 12 BOM CK 0038
In the Bombay High Court
Case No : Criminal Appeal No. 560 Of 2017

Mohin Sk. Munshi

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 07-12-2020

Acts Referred:

Indian Penal Code, 1860 — Section 34, 300, 302, 304, 504, 506
Code Of Criminal Procedure, 1973 — Section 161, 174(1), 313
Evidence Act, 1872 — Section 134

Citation : (2020) 12 BOM CK 0038

Hon'ble Judges : Z. A. Haq, J; Amit B. Borkar, J

Bench : Division Bench

Advocate : Sangram V. Sirpurkar, S. S. Doifode

Final Decision : Dismissed

Judgement

Amit B. Borkar, J

1. Through this appeal, the appellant challenges the judgment and order dated 28.09.2017, passed by the Ad-hoc Additional Sessions Judge,

Khamgaon, in Sessions Case No.05/2014 convicting and sentencing him in the manner stated hereinafter:â?

Under Section 302 of the Indian Penal Code, 1860 to suffer imprisonment for life and to pay a fine of Rs.5000/-, in default to undergo three monthsâ?? Rigorous Imprisonment.

2. The prosecution case in brief, is that the informant - Sk. Karim Sk.Badar (PW1) is the resident of Bhalegaon near Mosque (Masjid), Tq.

Khamgaon, Dist.Buldana. His brother-in-law (wife's brother) namely Sk. Rais Sk. Gani was residing at the same village Bhalegaon along with his family. The said Sk. Rais was the only son to his parents. The said Sk. Rais has

seven sisters. The said Sk. Rais was holding around 1.5 acres of agricultural land in Bhalegaon Shivar. There were disputes in relation to the partition of the agricultural lands between the said Sk. Rais on one part, and his cousin brother Sk. Munshi Sk. Razzak and his sons namely Sk. Mohin, Sk. Mosin and Sk. Matin (who are the accused Nos.1 to 3 respectively). 10-15 days prior to the incident in question (that occurred on 22.10.2013) said Sk. Rais had lodged police report against said Sk. Munshi and his sons namely Sk. Mosin and Sk. Matin, suspecting that they have burnt Sk. Rais's Soyabin heap in his field, as a result of which said Sk.

Munshi and his sons raised quarrel with Sk. Rais and gave him threat to kill him

3. It is also alleged that on 21.10.2013, in the evening hours, accused Sk. Mosin, Sk. Matin and accused Sk. Mohin, who had returned from Surat

(Gujrat) gave said Sk. Rais abuses and threat that they will see him tomorrow. In the same night, Sk. Rais stated that incident to informant - Sk. Karim

(PW 1). Due to close relations, said Sk. Rais did not lodge police report of that incident.

4. It is stated that on 22.10.2013, the said informant Sk. Karim (PW 1) had been to Pimpalgaon Raja at around 6.30 a.m. for work. He received a

phone call there from somebody informing that at around 7.15 a.m. the accused- Sk. Mohin attacked said Sk. Rais by means of knife near â??Jhunka-

Bhakar Kendraâ?? at Bhalegaon. The informant - Sk. Karim immediately rushed to the place of occurrence within 10 minutes. Said Sk. Rais was

lying in the pool of blood there and crowd was gathered there. There were bleeding injuries on the back, chest, arms of said Sk. Rais, which were

caused by sharp edged instrument. Rafiquesha Bhikansha (PW 2), Sk. Rasool Sk. Bashir, informant's wife Jairunbi Sk. Karim (PW 14), informant's

sister-in-law Mumtaz Sk. Gani (PW 7) were present there. Sk. Rais stated there that Sk. Mohin Sk. Munshi assaulted him by means of knife by

coming from his behind and injured him on the instigation of his two brothers. While Sk. Rais was being taken to Khamgaon for treatment in the

vehicle namely Max, he died on the way. The Medical Officer attached to the General Hospital, Khamgaon (in short â??G.H. Khamgaonâ??), declared

said Sk. Rais dead. On the same day the informant - Sk. Karim lodged police report (Exh.55) at Pimpalgaon Raja Police Station at 10.45 a.m., and

accordingly, the First Information Report (Exh.56) came to be registered against

the accused persons, vide FIR No.48/2013 for the commission of offences punishable under Sections 302, 504, 506 read with Section 34 of the Indian Penal Code.

5. The Assistant Police Inspector namely Shri R.A.Talekar (PW 16) the Officer in-charge of Pimpalgaon Raja Police Station visited the place of occurrence on the very day and recorded Spot Panchnama (Exh.63) in presence of the panch witnesses namely Sk. Karim Sk. Bashir (PW 4) and Sk.Munaf Sk. Musa, both R/o. Bhalegaon. The Investigating Officer Shri Talekar (PW 16) also caused a sketch of the place of occurrence to be drawn from Revenue Officer, which is at Exh.90.

6. On the information (Exh.45) of the Casualty Medical Officer, G.H. Khamgaon about bringing of said Sk. Rais Sk. Gani to the hospital as dead, a sudden death proceeding bearing A.D. No.0/2013 (Exh.46) came to be registered at Khamgaon (City) Police Station under Section 174 (1) of the Code of Criminal Procedure. An Inquest Panchnama (Exh.47) came to be performed on the dead body of said Sk. Rais, at around 9.00 a.m., at G.H. Khamgaon by Assistant Sub Inspector namely Dilip Atrawalkar attached to Khamgaon (City) Police Station in presence of panch witnesses. The post-mortem examination was conducted on the dead body of said Sk. Rais at G.H. Khamgaon at the instance of ASI Dilip Atrawalkar.

7. It is claimed that the Investigating Officer during the course of investigation into the said crime recorded memorandum statement of the accused Sk. Mohin, while he was in police custody and at his instance one knife, one shirt and one handkerchief having blood stains were recovered under panchnama (Exh.67). The blood stained clothes of said deceased Sk. Rais were seized under seizure panchnama (Exh.118). The Investigating Officer sent the viscera (preserved by M.O.) of deceased Sk. Rais, the clothes so seized, blood mixed soil and ordinary soil (collected from the spot of incident) for Chemical Analysis. After completion of the investigation, charge-sheet came to be filed against the accused persons for their involvement in commission of offences as referred to above. The offence punishable under Section 302 of IPC being exclusively triable by the Court of Sessions, the case has been committed to Sessions Court for trial.

8. Charge (Exh.33) came to be framed against the accused persons for offences punishable under Sections 302, 504 and 506 read with Section 34 of

the IPC. As the accused persons pleaded not guilty, the trial commenced against them. From cross-examination and statements under Section 313 of

Cr.P.C., the defence of accused is of false implication.

9. During trial, in all, the prosecution examined 16 witnesses, one of them Sk. Yusuf Sk. Bashir (PW 3) was examined as an eye-witness. The learned

Trial Judge believed the evidence of Sk.Yusuf Sk.Bashir (PW 3) as eye-witness and convicted and sentenced the appellant in the manner stated

above.

10. We have heard Shri S.V. Sirpurkar, learned Advocate for the appellant and Shri S.S. Doifode, learned Additional Public Prosecutor for the

respondent.

11. Shri Sirpurkar, learned Advocate for the appellant submitted that testimony of Sk.Yusuf Sk.Bashir (PW 3) alleged to be eye-witness does not

inspire confidence and the learned Trial Judge is not justified in convicting the appellant relying on the sole testimony. He submitted that there are

material inconsistencies and omissions in the testimony of Sk.Yusuf Sk.Bashir (PW 3). He submitted that the Medical Officer â?" Dr. Sunil Joshi (PW

8) has not stated that the injuries on the person of deceased were sufficient in ordinary course of nature to cause death. He submitted that the injuries

on the person of deceased were simple injuries. He invited our attention to the cross-examination of Dr. Sunil Joshi (PW 8) and submitted that Dr.

Sunil Joshi (PW 8) has admitted that the injuries on the person of the deceased were possible by the weapon having sharp edge on both sides. The

weapon alleged to be recovered had sharp edge on only one side and, therefore, it was not possible that the injuries on the deceased were possible by

the weapon recovered. He therefore, submitted that learned Sessions Judge is not justified in convicting the appellant under Section 302 of the IPC.

12. Shri S. S. Doifode, learned Additional Public Prosecutor appearing for the respondent/State supported the impugned judgment and submitted that

the testimony of Sk.Yusuf Sk. Bashir (PW 3) inspires confidence, the ocular evidence of eye-witness is supported by medical evidence and other

circumstantial evidence in the form of recovery of weapon and blood stained clothes. He submitted that from the nature of injuries on the person of

deceased, it is clear that the appellant intended to cause death of deceased and therefore, the Trial Court is fully justified in convicting the appellant

under Section 302 of the IPC.

13. In our view, this appeal deserves to be dismissed, since as we feel that offence punishable under Section 302 of the IPC is made out against the appellant by the evidence on record. 14. So far as the involvement of the appellant in the incident is concerned, the same has been established beyond pale of doubt by the credible evidence furnished by Sk. Yusuf Sk. Bashir (PW 3), recovery of weapon at the pointing out of the appellant and the recovery of clothes having human blood.

15. As is evident from paragraph no.2 of the ocular account furnished by Sk. Yusuf Sk. Bashir(PW 3), he has narrated manner of assault on deceased Sk. Rais. He stated that he heard voice of Sk. Rais, who was saying â??o ma bachaoâ?, that the appellant was assaulting Sk. Rais at that time. Sk.Yusuf Sk.Bashir (PW 3) stated that he had rushed to the spot of incident where he saw the appellant assaulting Sk. Rais by knife. He stated that the appellant gave stab blow on his stomach, thereafter on chest, that Sk.Yusuf Sk.Bashir (PW 3) went to rescue Sk. Rais, at that time the appellant asked Sk.Yusuf Sk.Bashir (PW 3) not to interfere. He stated that the appellant had alone assaulted Sk Rais, accused nos. 2 to 4 came there, accused no.4 told that â??Sk Rais should be finishedâ?. He stated that blood was oozing from stomach and chest of Sk Rais and clothes of Sk. Rais were stained with blood.

16. We have examined the version of Sk. Yusuf Sk. Bashir (PW 3) and we find him to be an implicitly truthful witness. In the first place, it should be borne in mind that he has explained the circumstances in which he saw the incident. Secondly, it should be remembered that the manner of assault described by him is corroborated by the medical evidence. He stated that the appellant inflicted knife blow on abdomen and on chest of the deceased. The evidence of Dr. Sunil Joshi (PW 8), who performed the autopsy on the corpse of Sk. Rais corroborates this inasmuch as he found an incised wound on right infra clavicular region, incised wound on right infra mammary region on right lower rib congest border, incised wound on right forearm region and incised wound on interior aspect of left shoulder. Thirdly, it should be borne in mind that Sk. Yusuf Sk. Bashir (PW 3) is a wholly independent witness who had no animus or ill will against the appellant. In our view, in the absence of it he would not have falsely implicated the

appellant.

17. We feel that the solitary statement of Sk. Yusuf Sk. Bashir (PW 3) is itself sufficient to fix the involvement of the appellant in the crime. After all

the time honoured rule of appreciation of evidence is that evidence should be judged and not counted. It should be borne in mind that Section 134 of

the Indian Evidence Act, 1872 provides that "no particular number of witnesses shall in any case be required for the proof of any fact." The

provisions contained in Section 134 of the Indian Evidence Act, 1872 are founded on the principle that the evidence has to be weighed and not

counted. It should be remembered that plurality of evidence is only a rule of prudence and not an inflexible requirement of law. The necessity of

plurality crops up, in those cases, where evidence of a solitary witness is not wholly reliable, and where it is, as is the case here, in view of the

provisions contained in Section 134 of the Indian Evidence Act, 1872, the testimony of a solitary witness is sufficient to convict an accused. It is true

that it is not an inflexible rule of appreciation of evidence that the evidence of an independent witness has to be accepted as gospel truth but, the time-

honoured norm of appreciating evidence is that unless there are some intrinsic improbabilities or some glaring infirmities in the evidence of an

independent witness, which militate against the core of the prosecution case, the same should be accepted by Courts. Such an approach is founded on

the principle that Courts assess evidence on common sense and probabilities and once they find the evidence of a witness to be in tune with

probabilities and he is independent, they are loathe to disbelieve him unless there is some patent infirmity in his evidence, which to repeat, militates

against the core of the prosecution case. This is not the case here.

18. However, we have bonus evidence against the appellant in the form of recovery of his blood stained clothes and recovery of knife at his pointing

out. Sultan Khan (PW 5), who appears to be panch witness on memorandum and recovery panchnama, recorded by Investigating officer, testified in

his examination-in-chief that on 24.10.2013, the police had called him at Pimpalgaon Raja Police Station as a panch witness, that Imran Khan was the

other panch witness, the police had told that the appellant wanted to state something. He deposed that the appellant had made statement before them

that he would show/take out clothes and knife, which he had kept at his house.

He stated that the police accordingly recorded the same and after reading over of it by panchas, they had signed it. He stated that the panch witnesses, the police and the appellant had proceeded to the house of the appellant by police jeep, the appellant took out one mehndi coloured T-shirt, one black - white squared hanker-chief, both having blood stains and knife having 7 to 7.5 inches blade, having blood stains, that the police had seized the same under the panchnama and it was read over to panchas, which bears their signatures. It is pertinent to mention here that this witness had no animus, or ill-will against the appellant. In the absence of the same, in our view, he would not have falsely deposed about these recoveries. It is pertinent to mention that although, he was subjected to lengthy cross-examination, but nothing was extracted therefrom, which could make us doubt about his credibility.

19. It needs to be mentioned here that the clothes of appellant i.e. shirt, handkerchief and knife were sent to the Chemical Analyst, who found human blood bearing "B-group" on the shirt and the knife. In our view, the circumstance that the blood stained shirt, and handker-chief was recovered at the pointing out of the appellant, on which the Chemical Analyst found human blood bearing "B-group" is an incriminating circumstance. The

Honorable Supreme Court in paragraph no.10 of the oft quoted case of Khujji @ Surendra Tiwari Vs. State of Madhya Pradesh, reported in (1991)

3 SCC 627 has held that presence of human blood on the recovered article is incriminating evidence.

In our view, the evidence referred to above conclusively establishes the involvement of the appellant in the incident.

20. The learned Advocate for the appellant, failed in advancing any plausible explanation, which could persuade us to reject the ocular account of

Sk.Yusuf Sk.Bashir (PW 3) or the evidence of recovery of knife at the pointing out of the appellant.

21. In our view, the learned trial Judge is fully justified in convicting the appellant for the offence punishable under Section 302 of the IPC. The

evidence of eyewitness - Sk.Yusuf Sk.Bashir (PW 3), which we have accepted, candidly and clearly show that the appellant intentionally inflicted

knife blows on the abdomen and chest of deceased. The evidence of autopsy surgeon Dr.Sunil Joshi (PW 8), clearly shows that the incised stab

wounds inflicted on the abdomen of the deceased resulted in 300 CC of clotted blood in the cavity of abdomen. Dr. Sunil Joshi (PW 8) has stated

probable cause of death due to hemorrhage shock to liver. In reply to letter dated 26.10.2013 received from Police Station, Dr. Sunil Joshi (PW 8)

replied that the injuries caused to the deceased were by the recovered knife. He further replied that the injuries mentioned in his report could have

caused death. In our view, the act of the appellant intentionally inflicting blow on the abdomen and the chest of the deceased and causing injuries

which could have caused death, would be squarely covered by Third Clause of Section 300 of the IPC.

22. An analysis of the Third Clause of Section 300 of the Indian Penal Code would show that for its application, two requirements have to be satisfied

namely:â?

(a) there should be an intention to inflict a bodily injury (it should not be accidental) and;

(b) the injury inflicted should be sufficient in the ordinary course of nature to cause death.

23. Since the evidence of eye-witnesses shows that the appellant intentionally inflicted the knife blow on the abdomen and chest of the deceased and

testimony of the autopsy surgeon makes it crystal clear that the abdomen injury sustained by the deceased was the cause of death, both the

prerequisites are satisfied.

24. Shri Sirpurkar, learned advocate for the appellant, submitted that the conviction of the appellant be downgraded from Section 302 of the IPC to

Section 304 of the IPC. We do not find any merit in this submission. Autopsy surgeon Dr. Sunil Joshi (PW 8), while referring to the letter dated

26.01.2013 stated in his deposition that the injuries caused to the deceased could have caused death. He has further stated that he had noticed 300 CC

of clotted blood in the cavity of abdomen. He stated that the probable cause of death was due to hemorrhage shock to the liver. The appellant had

intentionally inflicted six incised wounds on the vital parts on the person of deceased. It should be borne in mind that Dr. Sunil Joshi (PW 8) is the

wholly independent witness, who had no animus against the appellant. There was enmity between the appellant and the deceased. The appellant

carried knife with him before assaulting the deceased.

25. Shri Sirpurkar, learned Advocate appearing for the appellant brought to our notice some omissions in the statement of Sk.Yusuf Sk.Bashir (PW 3)

recorded under Section 161 of Cr.P.C.. The said omissions, in our view, only touch the fringes of his evidence and not the core. The Honâ??ble

Supreme Court in the decision in the case of Matadin and others Vs. State of U.P., reported in 1980 supp SCC 157 has in paragraph no. 3 held that

where the omissions are not in respect of vital matters, they have no adverse bearing on the veracity of the witness. In such a situation, this

submission of Shri Sirpurkar, Advocate also has no force.

26. For the aforesaid reasons, we confirm the conviction and sentence of the appellant for the offence punishable under Section 302 of the IPC and

dismiss this appeal. The appellant is in jail and shall serve out his sentence. Bail bonds of accused nos. 2 to 4 are cancelled. The appeal is dismissed.

Muddemal property, if any, be dealt with according to law.