
(2015) 03 BOM CK 0323

In the Bombay High Court

Case No : Criminal Appeal Nos. 700 and 1056 of 2013

Pavan Vasudeo Sharma and Others

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 24-03-2015

Acts Referred:

Arms Act, 1959 — Section 25, 3

Bombay Police Act, 1951 — Section 135, 37(1)

Penal Code, 1860 (IPC) — Section 302, 34, 37(1), 392

Citation : (2015) 03 BOM CK 0323

Hon'ble Judges : V.K. Tahilramani, J;B.P. Colabawalla, J

Bench : Division Bench

Advocate : Rohini M. Dandekar, for the Appellant; F.R. Shaikh, APP, Advocates for the Respondent

Judgement

V.K. Tahilramani, J—The appellant Pavan Vasudeo Sharma has preferred Criminal Appeal No. 700 of 2013 and the appellant Pankaj @ Rahul Ramgopal Jagaria has preferred Criminal Appeal No. 1056 of 2013. Both the appeals are directed against the judgment and order dated 11.1.2011 passed by the learned Additional Sessions Judge, Pune in Sessions Case No. 606 of 2006. By the said judgment and order, the learned Sessions Judge convicted both the appellants-accused nos.1 and 2 under Sections 302 and 392 read with Section 34 of IPC, under Section 37(1) read with Section 135 of Bombay Police Act and under Section 3 read with Section 25 of the Indian Arms Act. For the offence under Section 302 read with Section 34 of IPC, they were sentenced to R.I. for life. For the offence under Section 392 read with Section 34 of IPC, they were sentenced to R.I. for two years. For the offence under Section 37(1) read with Section 135 of Bombay Police Act, they were sentenced to R.I. for 15 days. For the offence under Section 3 read with Section 25 of the Indian Arms Act, they were sentenced to R.I. for six months. All the sentences were directed to run concurrently. As both the appeals are directed against the very same judgment and order, they are being heard and disposed of together by this common

judgment. For the sake of convenience, we shall refer to the appellants as they were referred to before the trial Court i.e. appellant Pavan Vasudeo Sharma will be referred to as accused no.1 and appellant Pankaj @ Rahul Ramgopal Jagaria will be referred to as accused no.2.

2. The prosecution case, briefly stated, is as under:

On 20.12.2005 both the appellants-accused nos.1 and 2 accosted P.W. 11 Police Naik Nagare and robbed him of his pistol (service revolver) and walkie talkie set. F.I.R. was registered on 20.12.2005 in respect of the said offence which is at Exh. 106. The said case was separately tried. Thereafter the appellants committed the present offence wherein they committed murder of Bhima Waghmare by shooting him with firearm which was robbed from P.W. 11 Police Naik Nagare. Deceased Bhima Waghmare was having two cell phones, one of them was of Nokia company and the cell number was 9850520922. Both the cell phones were also robbed. F.I.R. was lodged in relation to the murder of Bhima Waghmare and robbery of articles from him by P.W. 1 P.S.I. Dabir. The said F.I.R. was mainly under Sections 302 and 392 read with Section 34 of IPC. Thereafter the appellants kidnapped one small boy Akash Lokhande on 13.1.2006. Thereafter calls for ransom were made by them on the cell phone of P.W. 12 Sanjay Lokhande who was the father of Akash. These calls were made from Cell Phone No. 9850520922. F.I.R. was registered in relation to the kidnapping on 13.1.2006. The said case was tried separately.

As far as the present case is concerned, on 4.1.2006, P.W. 1 P.S.I. Dabir received phone call that one injured person was lying near one motor-cycle on Pune highway, hence, he went to the spot. PSI Dabir took the injured to the hospital where he was declared dead. On the basis of motor-cycle driving licence found in the pant pocket of the deceased, the deceased was identified as Bhima Waghmare. His family members were then informed. P.W. 1 P.S.I. Dabir lodged F.I.R. Exh. 13. The offence was registered vide C.R. No. 5 of 2006. Thereafter, investigation commenced. The dead body of Bhima Waghmare was sent for post-mortem. P.W. 3 Dr. Joshi conducted the post-mortem on the dead body of Bhima Waghmare. Dr. Joshi noticed firearm injury on the right inframammary region. Firearm injury was also noticed on the thigh. In the opinion of Dr. Joshi, the cause of death was hemorrhagic shock due to injury to vital organs. During the course of investigation of the kidnapping case, police received information that the boy was confined in Silvernest Building in Vimannagar, Pune. Hence, a raid was arranged. The raid was conducted in presence of panchas. A trap was arranged around the building. On reaching the second floor, they noticed that the door was half shut. They noticed four persons chitchatting in the room. When police enquired the names of the four persons, they were told that their names were Pavan Vasudeo Sharma (accused no.1), Pankaj Ramgopal Jagaria (accused no.2), Vasudeo Sharma and Rajendra Gaud. Police apprehended these persons. During the search of accused no.1 Pavan Sharma, 9 mm. pistol (service revolver) with two live cartridges was found tucked at his waist. Two cell phones of Nokia

Company were also found with him. In the search of accused no.2 Pankaj Jagaria, a chopper was found on the left side of his waist belt. All the four persons came to be apprehended in the kidnapping case. During further investigation of the kidnapping case, it was revealed that present accused nos.1 and 2 were involved in the case of murder and robbery relating to Bhima Waghmare, hence, they were arrested in the present case. The pistol seized from accused no.1 Pavan Sharma was sent for forensic analysis. The bullet found in the stomach of Bhima Waghmare was also sent for analysis. The result of forensic analysis shows that pistol which was found with accused no.1 Pavan Sharma, was in working order and it was used for firing prior to being tested in the laboratory. One 9 mm cartridge was successfully test fired from the pistol and it was found that the features of the firing pin impression impressed on the cartridge tallied with those found in the body of Bhima Waghmare. After completion of investigation, charge sheet came to be filed against the present appellants. In due course, the case was committed to the Court of Sessions for trial.

3. Charge came to be framed against the appellants under sections 302 and 392 read with Section 34 of IPC, under Section 37(1) read with Section 135 of Bombay Police Act and under Section 3 read with Section 25 of the Indian Arms Act. They pleaded not guilty to the said charge and claimed to be tried. The defence of the appellants is that of total denial and false implication. After going through the evidence adduced in this case, the learned Sessions Judge convicted and sentenced the appellants as stated in para 1 above, hence, this appeal.

4. We have heard the learned Advocate appointed for the Appellants and the learned A.P.P. for the State. After giving our anxious consideration to the facts and circumstances of the case, arguments advanced by the learned Advocates for the parties, the judgment delivered by the learned Sessions Judge and the evidence on record, for the reasons stated below, we are of the opinion that accused no.1 Pavan Sharma is involved in the murder of Bhima Waghmare.

5. It is the prosecution case that on 20.12.2005 both the appellants accosted P.W. 11 Police Naik Nagare and robbed him of his pistol (service revolver) and walkie talkie set. F.I.R. was registered in respect of the said offence which is at Exh. 106. According to the prosecution the service revolver which was robbed from P.W. 11 Police Naik Nagare was the very same pistol which was used to fire at Bhima Waghmare on 4.1.2006 which caused his death. P.W. 11 Police Naik Nagare has stated that on 20.12.2005 he was directed to go for patrolling duty. Accordingly, he went on patrolling duty. At that time, he was carrying with him service pistol and walkie talkie set. When he reached near Nagzari bridge, he saw two persons were standing on one side of the bridge and another person was standing on the other-side of the bridge. He saw one of them throwing something to the other-side of the bridge. Police Naik Nagare suspected that it was a string, hence, he stopped his motor-cycle. The three persons then attacked him. One of them found pistol (service revolver) at his waist belt which

was snatched by the said person. The person who snatched the pistol tried to shoot at police Naik Nagare by pressing the trigger, however, as it was locked, it did not fire. The said person then assaulted Police Naik Nagare on the head 5 to 6 times with the butt of the pistol due to which, he became unconscious. When he regained consciousness, he noticed the accused persons fleeing away from the spot on a motor-cycle. He was then taken to the hospital where the wounds on his head were stitched. He then lodged F.I.R. Exh. 106. Police Naik Nagare has identified both the appellants before the trial Court as being the same persons who had the robbed pistol from him. He has also identified the pistol (Art. 1) as the very same one which was robbed from him. It is pertinent to note that this pistol which was robbed from P.W. 11 Police Naik Nagare was the very same pistol which was seized from accused no.1 Pavan Sharma on 16.1.2006 when a raid was conducted on the premises wherein he was present with accused no.2 Pankaj Jagaria and two other persons.

6. P.W. 1 P.S.I. Dabir has stated that on 4.1.2006 when he was on duty, he received a phone call that one injured person was lying near one motor-cycle on Pune highway, hence, he went to the spot and found that one person was lying at the spot in injured condition. He took the injured to the hospital where he was declared dead. On the basis of motor-cycle driving licence found in the pant pocket of the deceased, the deceased was identified as Bhima Waghmare. His family members were then informed. P.W. 1 P.S.I. Dabir lodged F.I.R. (Exh.13). The offence was registered vide C.R. No. 5 of 2006.

7. The evidence of P.W. 2 Seema who was the wife of Bhima Waghmare shows that her husband possessed two cell phones, one of them was of Nokia company having number 9850520922. Mobiles of the deceased were also robbed. As observed above, Seema has stated that mobile number 9850520922 was being used by her husband. The evidence of P.W. 10 Sureshlal who was the Executive Director of the company in which Bhima Waghmare was working as a commission agent, shows that the mobile no. 9850520922 was being used by Bhima Waghmare. The evidence of P.W. 12 Sanjay shows that his minor son Akash was kidnapped on 13.1.2006 and he received phone calls demanding ransom on his mobile phone and the calls were made from mobile no. 9850520922. He lodged F.I.R. on 13.1.2006 in relation to kidnapping of his son Akash and during the investigation of this kidnapping case, information was received that kidnapped boy was kept in Silver Nest building in Vimannagar, Pune, hence, a raid was conducted at the said building.

8. P.W. 9 Police Inspector Devare has stated that information in respect of keeping abducted boy in Silver Nest building, Vimannagar, Pune was received on 16.1.2006. He has further stated that he along with other police staff and panch reached Silver Nest building at Vimannagar, Pune to conduct a raid. On reaching there, they noticed that four persons were in the hall. On being questioned, the four persons disclosed their names as Pavan Vasudeo Sharma (accused no.1), Pankaj Jagaria (accused no.2), Vasudeo Sharma and Rajendra Gaud. On taking

search of Pavan Sharma, a 9 mm service revolver was found at the waist belt of Pavan Sharma with two live cartridges. Two mobile handsets were also found with him. A chopper was found at the waist of accused no.2 Pankaj. The said weapons and other articles including almost Rs.3 lakhs in cash came to be seized. The evidence of panch witness P.W. 8 Sudhakar also shows that a raid was conducted at Silver Nest building in Vimannagar, Pune in relation to the information that a minor boy who was kidnapped, was confined in the said building. He has also stated about weapon i.e. pistol and chopper being found with accused no.1 Pavan and accused No. 2 Pankaj respectively.

9. The pistol seized from accused no.1 Pavan Sharma was sent for forensic analysis. The bullet found in the stomach of Bhima Waghmare was also sent for analysis. The result of forensic analysis shows that pistol which was found with accused no.1 Pavan Sharma, was in working order and it was used for firing prior to being tested in the laboratory. One 9 mm cartridge was successfully test fired from the pistol and it was found that the features of the firing pin impression impressed on the cartridge tallied with the bullet found in the body of Bhima Waghmare.

10. Thus, the evidence on record shows that the pistol which was found tucked at the waist of accused no.1 Pavan, was the same one which was used to fire at Bhima Waghmare. This pistol being found with the accused no.1 soon after the incident, gives rise to an inference that it was the appellant alone who fired two shots at Bhima Waghmare.

11. The case of the prosecution that Bhima Waghmare was shot dead is further corroborated by the medical evidence. P.W. 3 Dr. Joshi conducted the post-mortem on the dead body of Bhima Waghmare. On external examination, he found the following injuries:

"(1) Fire arm injury. Right side inframammary region, 13 cm below and medial to left mammary gland.

(2) Burn injury due to fire arm on left thigh. Two in number. 9 cm. below iliac left side, admeasuring 2 1/2 cm. x 1 cm. Superficial to deep. Dark black in colour with red centre.

(3) Abrasion over 9 cm. below illiac region left side 8 cm below and 5 cm posterior to anterior superior illiac spine, admeasuring 2 1/2 cm x superficial to deep.

(4) Abrasion on body as under:

(A) Arm medial third anteriorly;

(B) Elbow posteriorly and

(C) Wrist anteriorly:

(a) Thigh middle third.

(b) Knee joint."

12. Dr. Joshi also found following corresponding internal injuries:

"Penetrating wound to abdominal wall, peritoneum superior side of left lobe of liver, shattering part of it. Coming out at inferior side, entering into pancreas, shattering out the pancreas, penetrating at two sites at mesentery of small intestine. Two cm. in diameter each, going posterior medial to left kidney with large retro peritoneal and peritoneal region. Fitting lumbar spine no.4 and 5 body with indentation and fracture at left side of body of L 4 and L 5. Changing the direction hitting iliac crest at left Sacro iliac joint. Changing direction, getting embedded into para spinal muscles and fat left side, directed laterally and superiorly. Bullet recovered from above mentioned side. Yellowish metal concavity at its base."

13. On going through the record, we are of the opinion that there is sufficient evidence to prove that accused no.1 Pavan is involved in the crime relating to the murder of Bhima Waghmare. As far as accused no.2 Pankaj Jagaria is concerned, there is no material in the present case to connect him with the murder of Bhima Waghmare. However, the evidence on record shows that a chopper was found tucked at the waist of accused no.2 Pankaj when he was apprehended. In such case, the offence under Section 37(1) read with Section 135 of the Bombay Police Act is clearly made out against him. In this view of the matter, the following order is passed:

ORDER

(1) Criminal Appeal No. 700 of 2013 filed by accused no.1 Pavan Vasudeo Sharma is dismissed and the conviction and sentence imposed on him under Sections 302, 392 of IPC and 37(1) r.w. 135 of Bombay Police Act and under Section 3 read with Section 25 of Indian Arms Act, is confirmed.

(2) Criminal Appeal No. 1056 of 2013 filed by accused no.2 Pankaj @ Rahul Ramgopal Jagaria is partly allowed and he is acquitted from the offences under Sections 302, 392 of IPC and under Section 3 read with Section 25 of Indian Arms Act. However, the conviction and sentence imposed on him by the trial Judge under Section 37(1) read with Section 135 of the Bombay Police Act, is maintained. If he has undergone the sentence, he be set at liberty forthwith, if not required in any other case.

(3) Writ of order is expedited.

(4) Office to communicate this order to the appellants who are in jail.

(5) We quantify legal fees to be paid to Advocate Ms. Rohini Dandekar by the High Court Legal Services Committee at Rs. 5,000/-.