
(2014) 03 BOM CK 0073
In the Bombay High Court
Case No : Criminal Appeal No. 1330 of 2012

Pravin Rajendra Rathod

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 04-03-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 34 363 364 396 397

Citation : (2014) ALLMR(Cri) 2571 : (2014) 2 BomCR(Cri) 418 : (2014) 2 Crimes 339

Hon'ble Judges : P.V. Hardas, J;A.S. Gadkari, J

Bench : Division Bench

Advocate : Hitesh Shah, for the Appellant; F.R. Shaikh, Addl. P.P., for the Respondent

Final Decision : Allowed

Judgement

P.V. Hardas, J.—Criminal Appeal 1330 of 2012 has been filed by original accused No. 3, while Criminal Appeal 1364 of 2012 has been filed by original accused Nos. 4 and 6 who take exception to the judgment of the Ad-hoc Additional Sessions Judge-1, Malegaon, District Nashik dated 5 April 2010 in Sessions Case No. 49 of 2001 convicting and sentencing the Appellants for offence punishable u/s 363 read with 34, 396 and sentencing them to suffer rigorous imprisonment for three years and to pay fine of Rs. 1,000/- in default of which to undergo further rigorous imprisonment for nine months and imprisonment for life respectively. Since both these Appeals arise from the same judgment, these Appeals are being decided by this common judgment. At the outset it may be stated that original accused No. 5 had filed Criminal Appeal 1212 of 2011 which was allowed by this Court by its judgment dated 3 May 2012. It appears that the present Appellants had not filed any appeal questioning their conviction. Subsequently the present Appeals came to be filed.

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

On 5 February 2001 at Manmad-Malegaon Road, the accused are alleged to have committed dacoity. On that day, deceased Rushid Khan who was driving truck No. MP-09/KV-3417 was accompanied by Dhaniram who worked as a cleaner. When the truck entered a village, the diesel pipe of the said truck was damaged and therefore, the engine stalled. The deceased Rushid Khan therefore stopped the truck in order to ascertain what was the fault. Two persons came there and on seeing the damaged pipe, agreed to provide another pipe. After about half an hour, they came with a new pipe and replaced the damaged pipe. Those two persons also said that they were required to attend the another vehicle. Suddenly five to six persons came there and told Rushid Khan that they would take him to the person who would be repairing the vehicle. Accordingly those persons sat in the cabin of the truck, while the deceased Rushid Khan drove the truck for about half a kilometer. Then one jeep arrived there and obstructed the way of the truck. The persons who sat in the cabin took out the sword and assaulted the deceased Rushid Khan, his son Rashid Khan and the cleaner. The person thereafter repaired the truck and drove the truck away. Money which was in the pocket of Rushid Khan was also removed. The driver, cleaner and P.W. 17 Rashid Khan were then kept in a jeep. The deceased Rushid Khan was assaulted by a sword on his ear, neck and chest. The injured were thereafter thrown from the jeep in the sugarcane field. Dhaniram, cleaner of the said truck went to the police station and accordingly informed the police. On the police arriving at the scene of the incident, they noticed the driver Rushid Khan was dead, while his son Rashid Khan was injured and the injured was accordingly taken to the hospital. An offence vide Crime No. 16 of 2001 was registered at Manmad Police Station. On 13 February 2001, the accused were got transferred from the judicial custody of the Judicial Magistrate. During the course of interrogation, certain properties were recovered from the accused were seized. Statements of witnesses were recorded. Tahasildar Nandgaon conducted the Test Identification parade where P.W. 17 Rashid Khan identified the accused. The seized property was thereafter referred to the Chemical Analyzer along with a forwarding letter.

3. The postmortem on the dead body of the deceased Rushid Khan was conducted by P.W. 11 Dr. Sham Narayan Bankar. P.W. 11 Dr. Bankar noticed the following external injuries:

1. Incised wound over face extending from left frontal region to left orbit, medially nasal bone lower part, right maxilla and left side of chin. 7 X 3 X 4 inch blood clots present, edges sharp, tapering wound.
2. Incised wound over left side of neck below chin 2 X 1/2 X 1/2 inch elliptical shape, blood clots present, sharp edges.
3. Incised wound over left side of neck till supra clavicular region 2 1/2 X 1 X 1/2 inch. blood clots present, elliptical shaper edges sharp.
4. Incised wound over left shoulder anteriorly near lateral 1/3rd of clavicle, 1 X 1/2 X 1/4 inch blood clots present, edges sharp.

5. Incised wound over left 3rd ICS 1 X 1/2 X 1/2 inch blood clots present, edges sharp.
6. Incised wound over medial to left nipple vertically 1 X 1/2 X 1/4 inch. blood clots present edges sharp.
7. Incised wound above right nipple 2 X 1/4 X 1/2 inch blood clots present, sharp edges.
8. Incised wound over right middle 1/3rd of clavicle 1 X 1/4 X 1/2 inch, blood clot present, sharp edges.
9. Incised wound over right 2nd ICS 1 X 1/2 X 1/2 inch blood clots present, edges sharp.
10. Incised wound over left side of sternum, 1 1/2 inch X 1/2 X 1/2 inch blood clots present, edges sharp.
11. Incised wound over back near right shoulder 1 X 1/4 X 1/2 inch sharp edges, blood clots present, elliptical shape.
12. Incised wound over back left supra scapular region 1 X 1/2 X 1/2 inch blood clots present, sharp edges.
13. Incised wound over back near medial side of right scapula 1/2 X 1/4 X 1/4 inch blood clots present, edges sharp.
4. On internal examination, he noticed fracture of frontal bone and nasal bone. He, therefore, opined that cause of death was due to cardio respiratory arrest due to neuro vascular shock due to hemorrhages through wounds over face and other multiple injuries. The postmortem report is at Exhibit 129. Further to the completion of investigation, a charge-sheet against the accused was submitted.
5. On committal of the case to the Court of Sessions, the Trial Court vide Exhibit 84 framed charge against the accused for offences punishable u/s 364 read with 34 and 397 of the Indian Penal Code. The accused denied their guilt and claimed to be tried. The prosecution in support of its case examined eighteen witnesses. The entire prosecution case revolves around the testimony of the solitary eye witness P.W. 17 Rashid Khan.
6. The Division Bench of this Court while deciding Criminal Appeal 1212 of 2011 by its judgment dated 3 May 2012 came to the conclusion that the evidence of P.W. 17 Rashid Khan did not inspire confidence. The alleged incident had been committed at night and there was darkness at the scene of the incident. The Division Bench at paragraph 11 of the judgment came to the conclusion that no reliance could be placed on the Test Identification parade conducted by P.W. 13-Kedu Sakharam Dharrao, Tahasildar, Nandgaon. The Division Bench found that there was infirmity in the conduct of the test identification parade as all the nine accused were put up for identification and in the first round four accused, while in the second round four other accused were paraded and thereafter one accused

was paraded for identification. The Division Bench then came to the conclusion that in the absence of any other evidence which would establish the complicity of the accused, acquitted the appellant i.e. original accused No. 5.

7. With the assistance of counsel for the Appellant, and the learned Additional Public Prosecutor, we have perused the evidence of the witnesses. Upon such perusal, we concur with the findings arrived at by the Division Bench of this Court in its judgment dated 3 May 2012 in Criminal Appeal 1212 of 2011 and for the reasons so stated therein, we allow the present Appeals and accordingly acquit original accused Nos. 3, 4 and 6. Accordingly, Criminal Appeal Nos. 1330 of 2012 and 1364 of 2012 are allowed and the conviction and sentence of the Appellants is hereby quashed and set aside and the Appellants are acquitted of the offence with which they were charged and convicted. Fine, if paid, by the Appellants be refunded to them. Since the Appellants are in jail, they be released forthwith, if not required in any other case. Fees payable to learned counsel for the Appellants are quantified at Rs. 5,000/-.