
(2022) 11 BOM CK 0032
In the Bombay High Court
Case No : Criminal Appeal No. 342 Of 2015

Rajendra @ Raju Kanadi And Others

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision : 14-11-2022

Acts Referred:

Indian Penal Code, 1860 — Section 302
Evidence Act, 1872 — Section 134

Citation : (2022) 11 BOM CK 0032

Hon'ble Judges : A.S. Gadkari, J; Milind N. Jadhav, J

Bench : Division Bench

Advocate : Manas N. Gawankar, H.J. Dedhia

Final Decision : Dismissed

Judgement

Milind N. Jadhav, J

1. This Appeal questions the legality of Judgment and Order dated 22.07.2014 passed by Additional Sessions Judge, Greater Bombay, in Sessions Case No.240 of 2012 convicting Appellant under Section 302 of Indian Penal Code, 1860 (for short "IPC") and sentencing him to suffer rigorous imprisonment for life and pay fine of Rs.1,000/-, in default, to suffer rigorous imprisonment for three months.

2. Appellant is convicted for committing murder of his friend Manish Harishchandra Thorat (deceased) on 30.11.2011 at about 3.00 p.m. by inflicting blow with knife on his neck, chest and buttock.

3. Shorn of unnecessary details, facts of the case which emerge from record are as follows:

3.1. First informant Mangesh Shiva Pendse - PW-8, friend of deceased Manish Thorat (referred to as "Manish") resided at Room No. 25, Upendra Nagar, by-lane on Senapati Bapat Marg, near Dadar Railway Station. Mangesh and Manish used to have their meals together. On 30.11.2011 at 2:00 p.m., Manish visited

Mangesh's room and both had lunch together, after which they were talking to each other. At around 3:00 p.m., Appellant barged into Mangesh's room and demanded money from Manish. There was a quarrel between them which resulted in Appellant assaulting Manish with knife on left side of his neck and right side of his buttock. In order to save himself Manish ran out of the room and Appellant chased him and inflicted one more blow with the knife on the left side of his chest in front of Gupta General Store. Manish fell down on the ground and Appellant ran away from the scene of crime. PW-8 and PW-2 – Kaliya Dehede (friend) admitted injured Manish to K.E.M Hospital, Parel where he was declared dead before admission.

3.2. On receiving information from hospital, at about 6.10 p.m. PW-1 – PSI Shreedhar Jadhav attached to Dadar Police Station, Mumbai rushed to the hospital where he got to know that Manish was declared dead. PW-1 registered ADR No. 103/2011 (Exh.10) and drew inquest panchanama (Exh. 11) in presence of pancha witnesses and sent the dead body of Manish for postmortem. After enquiry with PW-8, he lodged the First Information Report (for short "F.I.R") and registered C.R. No. 396/11 against Appellant for offence punishable under Section 302 IPC.

3.3. PW-1 visited the spot of incident and prepared spot panchanama (Exh. 13) and recorded statement of witnesses viz; Sunil Pendse and Dharampal (uncle of Manish). Appellant was arrested by PW-7 - API Jayendra Sawant on the same night and blood stained knife was recovered and seized in the presence of two pancha witnesses viz; Santosh Mandavkar - PW-5 and Satappa Tamhankar. He prepared arrest cum seizure panchanama (Exh. 20). PW-1 also prepared Arrest Panchanama (Exh. 46). He sent the weapon-knife to the chemical analyser for forensic report.

3.4. PW-9 – PI Jayant Pardeshi Investigation Officer (for short "IO") thereafter took over further investigation and recorded statements of witnesses. CA reports (Exh. 44 and 45) and PM report (Exh. 35) were received by him. He also collected the weapon examination report (Exh. 31) prepared by PW-6. After completing investigation, he submitted chargesheet before the learned Additional Chief Metropolitan Magistrate, Dadar (ACMM). Since offence punishable under Section 302 IPC is exclusively triable by the Court of Sessions, learned ACMM committed the case for trial to the Sessions Court.

4. Charge (Exh. 2) was framed against Appellant for offence punishable under Section 302 IPC. It was read out and explained to him in vernacular. He denied the charge, pleaded not guilty and claimed to be tired. In order to bring home guilt of Appellant, prosecution examined 9 witness; defence did not examine any witness.

5. PW-2, Kalia Dehede, common friend of Appellant, Manish and PW-8 deposed that he was present in Manish's room before the incident. That Manish sent him to bring 'Lassi' and while returning on his way back he saw Manish lying in a pool

of blood near Gupta General Stores and Appellant running away holding a knife in his hand. He stated that, Manish sustained stab injuries and thereafter he and PW-8 took him to K.E.M. Hospital where he succumbed to injuries. It is pertinent to note that in cross-examination PW-2 has stated that all of them used to take drugs and fight over money for purchasing drugs. PW-3 – Santosh Kalunkhe (friend) deposed that he knew all of them and that he informed the police about presence of the Appellant in the same vicinity after commission of crime and go him arrested. PW-4 – Santosh Mandavkar was called by PW-7 to act as a pancha witness. He deposed that Appellant disclosed his name as Raju Kanadi in police custody. That he was found possessing one long knife, the handle of knife was red and green in colour. PW-4 identified Appellant as well as the knife before Court. PW-5 – Kamlesh Duple another pancha witness to inquest panchanama (Exh.11) and spot panchanama (Exh.13).

6. PW-6 – Dr. Ritimal Nath, conducted autopsy on the dead body of Manish and in the PM notes (Exh.35) noted the following 6 injuries:-

i. Incised wound of size 1 and 1/2 cm x 0.5 cm skin deep over the left lateral side of neck 1.5 cm away from mid-line and 3.5 cm away from chin 147 cm from left heel, margins are bright red coloured.

ii. Abrasion of size 1.5 cm x 0.5 cm over the right shoulder bright red in colour.

iii. linear scratch of size 6 cm x 0.2 cm over the left side chest 2 cm medial to nipple.

iv. stab injury of size 1.5 cm x 0.5 cm cavity deep over the left side of chest 3 cm medial to nipple, 3 cm lateral to mid-line, 14 cm below the clavicle and 120 cm away from left heel which clean cut sharp margins.

v. linear scratch [abrasion] of size 5 cm x 0.2 over left lateral chest wall in mid-axillary line.

vi. Stab injury of size of 0.5 x 0.5 cm muscle deep over the right buttocks with clean cut sharp margins 19 cm below anterior superior iliac spine, 8 cm away from mid-line.

6.1. PW-6 opined that cause of death was due to "Hemorrhagic shock as a result of stab injury to the left side of the chest". PW-6 examined the weapon (knife) and prepared weapon examination report (Exh.31) and opined that injuries on the body of Manish were possible by the knife (Article 'A').

7. PW-7 – API Jayendra Sawant, deposed that he received information of the incident on 30.11.2011 and reached the scene of crime where he got to know that Appellant had run away towards Dadar Railway line. He along with his staff, PW-4 and PW-5 searched the area and arrested the Appellant. One blood stained knife was found with the Appellant.

8. PW-8 Mangesh Shiva Pendse, common friend of Manish and Appellant is the star prosecution witness. He is eye witness to the incident and has in significant

detail narrated the entire incident of having seen and witnessed Appellant inflicting blow with the knife on Manish's left side neck, right side buttock, and left side of chest.

9. He has deposed that on date of incident, he and Manish had lunch together. That Appellant thereafter came there, demanded money from Manish and quarreled with him. Thereafter he assaulted him with the knife on the left side of his neck, right side of his buttock and when Manish escaped from his clutches, he chased him and inflicted another knife blow on the left side of his chest near Gupta General Stores. He identified the weapon knife (i.e. Article-A)

10. We have heard Mr. Manas N. Gawankar, learned Advocate appointed to represent the Appellant and Mr. H.J. Dedhia, learned APP for the State and with their able assistance perused the entire record of the case.

11. Before we advert to reappraise the evidence in the present case, it will be appropriate to refer to the settled law relating to reappraisal of evidence in a case based on ocular evidence.

11.1. In the case *Vadivelu Thevar Vs. The State of Madras* AIR 1957 SC 614 : MANU/SC/0039/1957 : [1957] 1 SCR 981, in paragraph Nos.13, 14 and 15, while enunciating the law relating to appreciation of evidence in a case based on ocular evidence, the Supreme Court has held as under:-

"13. It is not necessary specifically to notice the other decisions of the different High Courts in India in which the court insisted on corroboration of the testimony of a single witness, not as a proposition of law, but in view of the circumstances of those cases. On a consideration of the relevant authorities and the provisions of the Indian Evidence Act, the following propositions may be safely stated as firmly established :

(1) As a general rule, a court can and may act on the testimony of a single witness though uncorroborated. One credible witness outweighs the testimony of a number of other witnesses of indifferent character.

(2) Unless corroboration is insisted upon by statute, courts should not insist on corroboration except in cases where the nature of the testimony of the single witness itself requires as a rule of prudence, that corroboration should be insisted upon, for example in the case of a child witness, or of a witness whose evidence is that of an accomplice or of an analogous character.

(3) Whether corroboration of the testimony of a single witness is or is not necessary, must depend upon facts and circumstances of each case and no general rule can be laid down in a matter like this and much depends upon the judicial discretion of the Judge before whom the case comes.

14.The matter thus must depend upon the circumstances of each case and the quality of the evidence of the single witness whose testimony has to be either accepted or rejected. If such a testimony is found by the court to be

entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused person may be proved by the testimony of a single witness, the innocence of an accused person may be established on the testimony of a single witness, even though a considerable number of witnesses may be forthcoming to testify to the truth of the case for the prosecution. Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact.

Generally speaking, oral testimony in this context may be classified into three categories, namely :

- (1) Wholly reliable.
- (2) Wholly unreliable.
- (3) Neither wholly reliable nor wholly unreliable.

15. In the first category of proof, the court should have no difficulty in coming to its conclusion either way - it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court, equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial.

There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses."

11.2. In the case *Sudip kr. Sen and Ors vs. State of West Bengal and Ors.* AIR 2016 SC 310 : MANU/SC/0013/2016 : (2016) 3 SCC 26, in paragraph Nos.11 and 12, while enunciating the law relating to appreciation of evidence in a case based on ocular evidence, the Supreme Court has held as under:-

"11. It is well-settled that the court may act on a testimony of a single witness though uncorroborated, provided that the testimony of single witness is found reliable. Trial court which had the opportunity of seeing and hearing PW-6 found him wholly reliable and trustworthy and held that evidence of Sandipan Majumdar-PW6 cannot be doubted as far as the role attributed to A-1 to A-6 except Jishu Jain is concerned, which was affirmed by the High Court. We find no ground to interfere with the concurrent finding recorded by the Courts below as to the reliability of PW-6 and to record the conviction.

12. Observing that there is no impediment for recording conviction based on the testimony of a single witness provided it is reliable in *Prithipal Singh and Ors. v. State of Punjab and Anr.* MANU/SC/1292/2011 : (2012) 1 SCC 10, it was observed as under:

49. This Court has consistently held that as a general rule the court can and may act on the testimony of a single witness provided he is wholly reliable. There is no legal impediment in convicting a person on the sole testimony of a single witness. That is the logic of Section 134 of the Evidence Act. But if there are doubts about the testimony, the court will insist on corroboration. In fact, it is not the number or the quantity, but the quality that is material. The time-honoured principle is that evidence has to be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise. The legal system has laid emphasis on value, weight and quality of evidence, rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of evidence. [See *Vadivelu Thevar v. State of Madras* MANU/SC/0039/1957 : AIR 1957 SC 614, *Sunil Kumar v. State (Govt. of NCT of Delhi)* MANU/SC/0815/2003 : (2003) 11 SCC 367, *Namdeo v. State of Maharashtra* MANU/SC/7215/2007 : (2007) 14 SCC 150 and *Bipin Kumar Mondal v. State of W.B.* MANU/SC/0509/2010 : (2010) 12 SCC 91].”

11.3. Thus it is seen that the Supreme Court has stressed the sound and well established rule of law that the Court is concerned with the quality and not the quantity of the evidence necessary for proving or disproving a fact, especially in the case for convicting a person on the sole testimony of a single witness.

12. In the present case it is seen that testimony of PW-8 is therefore most relevant. PW-8 has witnessed the incident. He has given his eye witness account of the incident. He has deposed that Appellant inflicted blow with the knife on the left side of Manish’s neck, right side of his buttock and left side of his chest. He deposed that he did not remember the exact date and time of the incident but he witnessed the incident and then he with the help of PW-2 admitted Manish to K.E.M Hospital where he was declared dead. In his cross examination, he deposed that four friends i.e. PW-8, PW-2, Manish and Appellant used to consume drugs and used to quarrel about money for purchasing drugs. Although defence has argued that, PW-8 had gone to Nashik on 29.11.2011 for attending a marriage and returned the next day at about 5:00 to 6:00 p.m. and therefore did not witness the incident. However it is seen from his re-examination that he has clarified that he did not remember the date of incident by stating that, “Dhyan me nahi hai”. On perusal of his evidence it is clear that he was present at the time of the incident as he himself with the assistance of PW-2 get Manish admitted to the hospital. It is also seen that, he was also present at a time of inquest panchanama (Exh. 11) where he witnessed the stab injury on the left side of the chest and on the basis of his statement FIR was registered. Further he showed the spot of incident to PW-1 and spot panchanama (Exh. 13) were prepared in his presence which clearly proves his presence at the time of incident. He identified the weapon i.e. knife used by Appellant. It is important to note that testimony of PW-8 corroborates with the testimony of PW-2. PW-2 has

deposed that on his return he saw Manish was lying in a pool of blood near the grocery store and Appellant was running away holding the knife in his hand. Reading of the evidence of PW-8 and PW-2 clearly establishes presence of Appellant at the scene of crime. Medical evidence duly corroborates and supports the ocular evidence of PW-8. PW-8 had clearly seen Appellant inflicting knife blows on the neck and buttock of Manish. Pw-2 had clearly seen infliction of the knife blow on his chest.

13. PW-6. Dr. Nath in the PM Notes (Exh.35) has clearly opined that the cause of death of Manish is due to stab injury on the left side of his chest and his death is unnatural. He has also examined the knife (Article 'A') and prepared Weapon Examination Report (Exh. 31) and deposed that the injuries on the dead body of Manish were possible by the said knife.

14. That apart, the knife (Article-A) has been recovered from the Appellant (Exh.20). CA Report (Exh.44 & 45) show the presence of human blood stains on the knife. That PW-2 had seen Appellant running away from the scene of crime holding a blood stained knife in his hand is a very strong circumstance proving presence of accused after inflicting the third fatal knife blow on Manish's chest.

15. In view of the above discussion and findings, it is clear that PW-8 is the sole eye-witness as he saw the Appellant inflicting two blows with the knife on Manish's neck and buttock and later on his chest outside his room. His testimony is duly corroborated by the evidence of PW-2 and the medical evidence.

16. That there is complete failure on the part of Appellant to explain the circumstances leading to the death of Manish as the presence of Appellant with the weapon on the spot of incident stands clearly proven. Prosecution has thus proved beyond all reasonable doubts that on 30.11.2011 Appellant committed the murder of Manish by inflicting knife blows on his body.

16.1. We do not find any infirmity in the Judgment and Order date 22.07.2014 delivered by the learned trial Court on marshaling of the entire evidence. The same calls for no interference and deserves to be upheld.

17. Criminal Appeal No. 342 of 2015 is dismissed.

18. Before we part with the Judgment we would like to place on record appreciation for the efforts put in by Mr. Manas N. Gawankar, learned Advocate appointed by the High Court Legal Services Committee, Mumbai for espousing the cause of Appellant. He was thoroughly prepared in the matter and rendered proper and able assistance to the Court.