
(2012) 12 BOM CK 0062
In the Bombay High Court
Case No : Criminal Appeal 745 of 2005

Raju alias Rajan Kartaiya Harijan

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 06-12-2012

Acts Referred:

Bombay Police Act, 1951 — Section 135
Penal Code, 1860 (IPC) — Section 302, 37

Citation : (2013) 1 ABR 671 : (2013) 2 BomCR(Cri) 233

Hon'ble Judges : V.K. Tahilramani, J;A.R. Joshi, J

Bench : Division Bench

Advocate : Arfan Sait, for the Appellant; Shilpa Gajare Dhumal, for the Respondent

Final Decision : Dismissed

Judgement

A.R. Joshi, J.—Heard rival submissions on this Criminal Appeal preferred by the appellant/orig. accused challenging the judgment and order of conviction dated 21st October, 2004 passed by the Additional Sessions Judge, Greater Mumbai in Sessions Case No. 432 of 2002. By the impugned judgment and order the appellant/accused was convicted for the offence punishable u/s 302 of IPC and was sentenced to suffer imprisonment for life and to pay fine of Rs. 1000/-, in default to suffer SI for six months. Appellant/ accused was acquitted of the offence punishable u/s 37 read with Section 135 of the Bombay Police Act. The case of the prosecution, in nutshell, is as under: Victim Muttayya was residing in Dharavi area along with his family members including his eldest daughter by name Chandrika, his son then aged about 13 years one Prabhu Muttayya (PW 1) and another daughter Lalita and his wife. Appellant/accused Raju alias Rajan Harijan was residing in the same locality of Dharavi, Mumbai. Said appellant/accused was known to one G. Shrinivasagam Pallar (PW 2), Singyaraj (PW 3) and Babu Harijan (PW 4).

2. According to case of prosecution, appellant/accused Raju was teasing

Chandrika elder daughter of victim Muttayya. At times, he used to caught hold of her hands and was trying to molest her. He was making gestures for getting sexual favours and also at times was giving flowers to her. Chandrika was not responding to such advances of appellant/accused. At times, she had told him that she would teach him a lesson by slapping with the help of foot-wear. Apparently due to this situation appellant/accused was enraged with said Chandrika and also with her family members. The incident happened at about 11:30 p.m. or so on 1.1.2002. On that night at 9:00 p.m. victim Muttayya had closed down his stall of vending vada pav & tea etc. and he was proceeding to his house. That time his two daughters and son Prabhu (PW 1) were accompanying him. That time appellant/accused accosted them and he obstructed the way of Muttayya on the road. Earlier to this incident, apparently there was reprimanding of appellant/accused by Muttayya due to eve teasing incident and that time Muttayya had warned him not to indulge in such activities again or otherwise Muttayya would teach him a lesson. As such on this background, on the night of fateful incident appellant/accused obstructed victim Muttayya and told him to do what the victim had earlier threatened by cutting the hands of appellant/accused. That time apparently appellant/accused was well equipped with the weapon of assault i.e. a chopper/big knife. Said weapon was tucked near the waist under the lungi worn by appellant/accused. There was an altercation between victim and appellant/accused and victim Muttayya told him that he will not do any such thing like cutting the hands etc. However, apparently appellant/accused was determined to teach a lesson to the victim and took out chopper/big knife hidden near his waist and assaulted the victim on his chest and other parts of the body. Victim sustained severe bleeding injuries and probably died on the spot. The gravity of the injuries can be felt from the contents of the post-mortem report as reported by Dr. Harish Pathak (PW 6). Relevant extract of examination-in-chief of said PW 6 Dr. Harish Pathak is reproduced as under:

2. Post-mortem examination was started at 3 p.m. and was completed at 5 p.m. on the same day. The body was sent along with ADR No. 1/02. During the course of autopsy .I noticed following external injuries. Injury No. 1 is cut throat injury admeasuring 10 cm. x 5 cm., cutting muscles and blood vessels. Injury No. 2 incised wound 5 cm. x 2 cm. muscle deep. Injury No. 3 is linear abrasion 7 cms. in length. Injury No. 4 is incise wound 5 and half cm. x.25 cms. Skin deep. Injury No. 5 incise wound 2.5 cm. x.25 cm. skin deep. Injury No. 6 is partial amputation of little finger of left hand. Injury No. 7 is linear abrasion 5 cm. x 4 cm. Injury No. 8 is incise wound 3 cm. x 1/2 cm. skin deep. Injury No. 9 was also incise wound.

All the injuries were ante-mortem injuries. On internal examination all the organs were found pale due to loss of blood.

3. Noticing the incident of assault, PW 1 Prabhu brought his mother to the spot and then the injured victim Muttayya was taken to Sion Hospital. Doctor on examining the injured declared him dead. Police party arrived at the hospital and

PW 1 Prabhu was taken to the police station. PW 1 gave detailed complaint to the police in Tamil and it was narrated by PW 2 G. Shrinivasagam Pallar as PW 2 was brought there as summoned by police. Said statement of PW 1 Prabhu was treated as First Information report (Exh. 6). Said statement was given almost immediately within half hour of the assault. On the strength of said statement, offence was registered against the appellant/accused and investigation was started. However, initially whereabouts of appellant/accused were not known to the police as he was absconding. Enquiries were made in the locality and it was ascertained that appellant/accused was in acquaintance with PW 2 G, Shrinivasagam Pallar, PW 3 Singyaraj & PW 4 Babu Harijan inasmuch as appellant/accused was staying with PW 2 G Shrinivasagam Pallar at some point of time and he was on visiting terms with the house of PW 3 Singyaraj as he was friend of brother of PW 3 Singyaraj, and also he was well acquaintance with PW 4 Babu Harijan. During enquiry with these witnesses, the whereabouts of appellant/accused were found and specifically through PW 4 Babu Harijan. He took the police party to the native village of the accused at Arlachi, in Taluka -Tinkashi, District - Thirnalvelli. Police party along with panchas reached the native place of appellant/accused on 14.1.2002 and he was put under arrest under the panchnama (Exh. 10) and brought to Mumbai. In the meantime prior to leaving Mumbai after the incident of assault, appellant/accused had visited the house of PW 3 Singyaraj as he was on usual visiting terms to family of PW 3 Singyraj and he had kept one knife and one lungi kept in a plastic bag at the house of said PW 3 Singyaraj under some cupboard. Said knife and lungi were recovered subsequently from the house of said PW 3 Singyraj at the instance of present appellant-accused and during which panch witness PW 5 Atikur Chowdhery took part.

4. After completion of investigation and after obtaining the postmortem report and CA report etc., chargesheet was filed and the matter was committed to the Court of Sessions and was disposed of by the Additional Sessions Judge, Mumbai by the judgment and order which is impugned in the present appeal.

5. Admittedly, entire case of the prosecution revolves around the substantive evidence of PW 1 Prabhu and recovery of knife and lungi at the instance of accused from the house of PW 3 Singyaraj. Much is argued on behalf of appellant/accused by the appointed advocate Mr. Arfan Sait that the recovery of knife and lungi is doubtful inasmuch as CA report is not incriminating, so also it is doubtful whether appellant/accused would keep the weapon of assault and his own lungi having blood stains, concealed in the house of PW 3 Singyaraj. It is also further argued that as per the evidence of PW 3 Singyaraj he did not report the matter to the police, much less, to anybody else and then only after the arrest of appellant/accused it was allegedly recovered from his house. In other words, it is argued on behalf of appellant/accused that said chopper/big knife cannot be taken as the weapon recovered at the instance of the accused so as to implicate him with the offence of murder, in that event the entire case of prosecution rests only on the substantive evidence of PW 1 Prabhu, further argued. Considering

these arguments, still if it is accepted that recovery of weapon and lungi is doubtful, the substantive evidence of PW 1 Prabhu is required to be construed in order to ascertain whether said evidence inspires confidence.

6. On the above aspect, it is argued that PW 1 Prabhu is a young boy and as such he had concocted the story as to witnessing the incident. More over his two sisters allegedly accompanying him at the time of the incident were not examined by the prosecution, further argued. We have carefully gone through the substantive evidence of PW 1 Prabhu Muthappa. It must be said that he is a boy of 15 years, but having matured understanding and in fact attended the police station immediately after the assault and lodged his complaint narrating the details and specific involvement of appellant/accused and use of chopper by him. The substantive evidence of PW 2 G. Shrinivasagam corroborates the evidence of PW 1 Prabhuas. Said PW 2 G. Shrinivasagam had interpreted the statement of PW 1 Prabhu to the police and translated it from Tamil to Hindi.

7. Moreover, there is another circumstance as to while giving evidence before the Court help of Tamil interpreter, one Smt. Laxmi, was taken by the trial Court and said Laxmi interpreted what PW 1 Prabhu had stated before the Court in Tamil and it was so recorded by the trial Court. On all the material particulars, the substantive evidence of PW 1 Prabhu is in consonance with the First Information Report (Exh. 6). In the result, in our considered view, there is nothing to entertain doubt that PW 1 Prabhu is a got up witness and had falsely implicated appellant/accused.

8. Apart from the above, even the conduct of appellant/accused as to absconding from Mumbai and going to his native place for about two weeks, has not been properly explained by appellant/accused by producing any material which can be accepted, even on preponderance of probabilities. In our considered view, the initial burden on the prosecution has already been discharged by bringing the evidence of PW 1 Prabhu and two other witnesses, and hence it is necessary for the appellant/ accused to give at least plausible explanation for his absence from Mumbai immediately after the incident of assault.

9. In any event, it must be said that the Sessions Court has rightly appreciated the material brought before it in coming to the conclusion of guilt of appellant/accused for the offence of murder. There is nothing to interfere with the impugned judgment and order and there is no merit in the present appeal and the same is dismissed and accordingly disposed of. This judgment and order be communicated to the appellant who is presently lodged in jail, through concerned jail authorities.