
(2013) 07 BOM CK 0107
In the Bombay High Court
Case No : Criminal Appeal No. 240 of 2011

Sachin @ Aditya Janardan Kamble

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 12-07-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Evidence Act, 1872 — Section 106
Penal Code, 1860 (IPC) — Section 106, 201, 302, 328, 377

Citation : (2014) 3 BomCR(Cri) 466

Hon'ble Judges : Revati Mohite Dere, J; P.V. Hardas, J

Bench : Division Bench

Advocate : Nitin Sejpai and Ms. Pooja Bhojne, for the Appellant; Usha Kejriwal, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Revati Mohite Dere, J.—The Appellant stands convicted for the offences punishable u/s 302 of the Indian Penal Code ("IPC") and sentenced to suffer imprisonment for life and to pay a fine of Rs. 1,000/-, in default, to suffer rigorous imprisonment for a period of six months and u/s 201 of the IPC for an imprisonment of three years and to pay a fine of Rs. 500/-, in default, to suffer rigorous imprisonment for three months, and u/s 328 of the IPC to suffer imprisonment for a period of three years and to pay a fine of Rs. 500/-, in default, to suffer rigorous imprisonment for a period of three months, by the 1st Ad-hoc Additional Sessions Judge for Greater Mumbai at Dindoshi, by the Judgment and Order dated 24th December, 2011 in Sessions Case No. 38 of 2009. By this Appeal, the Appellant questions the correctness of his conviction and sentence.

The facts in brief as are necessary for deciding the appeal can briefly be stated as under:

PW 10-PSI Gulzarilal Phadtare who was attached to Dindoshi Police Station, has

stated that on 17th December, 2008 at about 8.30 p.m., Hanumant Laxman Kirve (PW.1) came to the Dindoshi Police Station alongwith Chandrakant Mokal (PW 5) and Rajan Shetye (PW 6). He has stated that Hanumant Kirve (PW 1) informed him, that one Bhupendra Singh Patiyal (deceased) had gone with Chandrakant Mokal (PW 5) and his driver Daljeet Singh (PW 3) to the Appellant's house at Goregaon and that Chandrakant (PW 5) and Daljeet (PW 3) had returned but Bhupendra had not. He has stated that Hanumant Kirve (PW 1) also informed him that Bhupendra's wife Seema Patiyal (PW 8) was trying to contact him since 15th December, 2008 and as he could not be contacted, she requested Hanumant Kirve (PW 1) to search for her husband. He has further stated, that Hanumant Kirve (PW 1) informed him that during his search for Bhupendra, he visited the flat of the Appellant at Goregaon and found that the door was locked and a foul smell was emanating from the said flat and as Hanumant Kirve suspected something untoward, he had come back to the Dindoshi Police Station.

Pursuant to the said information, PW 10-PSI Phadtare alongwith his police staff, Hanumant Kirve (PW 1), Chandrakant Mokal (PW 5) and Rajan Shetye (PW 6) went to the Appellant's flat at Goregaon. On reaching the building where the Appellant was residing, they found the Appellant sitting on a platform in the compound of his building. PW 10-PSI Phadtare has further stated, that Chandrakant (PW 5) pointed out the Appellant as being the same person with whom Bhupendra was last seen at his house. On enquiry made by PW 10-PSI Phadtare, the Appellant disclosed his name and address and took them to his flat. The Appellant opened the lock on the door of his flat with a key which was in his possession. As soon as the flat door was opened, a strong odour was found coming from the bedroom in the flat and on going to the bedroom, the box of the bed was opened wherein the dead body of Bhupendra was found. The body was in a highly decomposed condition.

Pursuant to the afore-stated, Hanumant Kirve (PW 1-complainant) lodged an FIR as against the Appellant, which was recorded at Exhibit-16, by PW 10-PSI Phadtare. On the basis of the said FIR, offences under Sections 302 and 201 of the IPC came to be registered as against the Appellant, vide CR No. 408 of 2008 with the Dindoshi Police Station.

Initially, investigation of the said crime was carried out by PW 10-PSI Phadtare. He prepared the inquest-cum-spot panchanama in the presence of the panchas, which is at Exhibit-17. The clothes of the deceased, one liquor bottle, one torn paper of ration card bearing the name of the deceased-Bhupendra were seized from the house of the Appellant. He forwarded the dead body for post mortem examination. He also took the personal search of the Appellant and in the personal search taken in the presence of the panchas, found one Timewell wrist watch, two gold rings, twenty tablets of Wyeth-Lorazepam in two strips and five loose tablets, one mobile (Nokia), one wallet containing an ATM Card of Bank of Baroda, one Smart Card of Indian Railway and Rs. 855/-. The said articles were seized under a panchanama, being Exhibit-47. Similarly from a bag which

belonged to the Appellant, two mobile phones, titan wrist watch, one spectacle box with spectacles came to be seized under the same panchanama.

The investigation of the said case was thereafter handed over by PW 10-PSI Phadtare to PW 11-PI Khadtare of the Dindoshi Police Station. On 19th December, 2008, PW 11-PI Khadtare recorded the statements of the witnesses. On 27th December, 2008, he visited the house of the deceased Bhupendra and prepared a panchanama in the presence of the panchas, being Exhibit-18. He also collected Leave and License Agreements in respect of the flat of the Appellant and the same were produced at Exhibit-21. The viscera of the deceased was forwarded alongwith the other articles to the Chemical Analyser and the post mortem report of the deceased was also collected by him. The exact cause of death could not be opined as the body was highly decomposed. PW 11-PI Khadtare made queries to the chemical analyser, whether, the cause of the death was a result of the tablets which were found in possession of the Appellant. The result of the analyst was inconclusive. PW 11-PI Khadtare, during his investigation, found that the Appellant had committed the murder of Bhupendra and with the intent to cause disappearance of the evidence of murder, had kept the dead body of the deceased in the box of a bed, in his flat. After completion of the investigation, PW 11-PI Khadtare submitted a charge-sheet as against the Appellant in the Court of Learned Chief Metropolitan Magistrate, 24th Court, Borivali, Mumbai, alleging offences punishable under Sections 328, 377, 302 and 201 of the Indian Penal Code. The case was committed to the Court of Sessions for trial of the Appellant, as the offences were exclusively triable by the Court of Sessions.

2. The Trial Court framed charge at Exhibit 6 as against the Appellant for the offences punishable under Sections 328, 377, 302 and 201 of the IPC. The Appellant pleaded not guilty and claimed to be tried.

3. The prosecution in support of its case, examined eleven witnesses. The defence of the Appellant was that of denial and false implication.

4. The Trial Court upon appreciation of evidence, convicted the Appellant for the offences punishable under Sections 302, 328 and 201 of the IPC. The Appellant was, however, acquitted for the offence punishable u/s 377 of the IPC.

5. We have heard the learned Counsel for the Appellant, Shri. Nitin Sejpal and the learned A.P.P. for the State. In order to effectively deal with the submissions canvassed before us by both the Counsel, it would be useful to refer to the evidence of the prosecution witnesses.

6. To prove the evidence of last seen, the prosecution has examined Chandrakant (PW 5) and Daljeet Singh (PW 3). PW 5-Chandrakant has stated in his evidence, that he knew the deceased Bhupendra and that he was introduced to the Appellant only two days prior to the incident at Bhupendra's office as the Appellant was to give him a job in the Film City. PW 5-Chandrakant has stated, that on 15th December, 2008, he was called by Bhupendra to his office at Navi

Mumbai as they were to meet the Appellant on account of his employment at Film City. Accordingly, on 15th December, 2008 at about 5.30 p.m., he alongwith Bhupendra and his driver Daljeet (PW 3) went in a car to the Dindoshi Depot, where the Appellant came to meet them and thereafter all of them went to the house of the Appellant, which was situated at Nagari Niwara Parishad, Goregaon. He has further stated, that the Appellant served tea to PW 3 Daljeet Singh and Bhupendra and milk to him. However, as the milk had a bad odour, after tasting the same, he poured the rest in the basin. PW 5-Chandrakant has further stated, that the Appellant informed Bhupendra that as he had come for the first time to his house he would go and get liquor for him. Accordingly, PW 5-Chandrakant alongwith the Appellant went to a liquor shop and purchased a bottle of "Royal Stag" and came back to the house of the Appellant. After Appellant arranged for the glasses, Bhupendra and the Appellant started consuming liquor and PW 3 Daljeet, a teetotaler was served a cup of tea by the Appellant. PW 5-Chandrakant noticed that the Appellant was not consuming liquor served in the glass. After some time, he found that PW 3 Daljeet had fallen asleep and therefore he too went to sleep next to him. He has stated that at that time he had seen the Appellant and Bhupendra sitting together i.e. at around 11.00 to 11.30 p.m.

7. PW 5-Chandrakant has stated that on 15th December, 2008 after they went to sleep at about 11.00 to 11.30 p.m., he woke up only on 16th December, 2008 at about 2.30 p.m. He noticed that Daljeet (PW 3) was still sleeping and noticed that Bhupendra was not there. He enquired with the Appellant about Bhupendra, who informed him that one girl had visited his house and that Bhupendra had accompanied her to Dadar. PW 5-Chandrakant expressed his desire to go the Dadar to meet Bhupendra, however, Appellant told him that Bhupendra will be back soon. As PW 5-Chandrakant insisted on going to Dadar, the Appellant informed him that Bhupendra had called them to Dadar at around 10.30 p.m. PW 5-Chandrakant has further stated that the Appellant served him with Dal and Rice and as a result he again went to sleep and woke up only at about 9.30 p.m. on 16th December, 2008. When he woke up, he noticed that Daljeet (PW 3) was still sleeping. He therefore woke him up and asked him to accompany him to Dadar to see Bhupendra. Thereafter, PW 5-Chandrakant alongwith Daljeet (PW 3) and the Appellant left for Dadar to meet Bhupendra. On the way, the Appellant asked them to get down at Andheri Station. He has stated that at that time Daljeet (PW 3) was not in a position to walk alone and hence the Appellant went and purchased Fruity and offered it to them. The Appellant is alleged to have stated that Bhupendra was going to meet them on the next day. Accordingly, they all went back to the house of the Appellant at about 1.00 a.m. and went to sleep.

8. PW 5-Chandrakant, has stated that on 17th December, 2008 at about 9.30 a.m., he along with Daljeet (PW 3) and the Appellant came to the Dindoshi Bus Stop in an auto-rickshaw and went to the house of Bhupendra at 11.30 a.m. He has stated that Bhupendra's house was locked but the same was opened by the Appellant. The Appellant had on his way purchased Samosas and cold drinks,

which were served to them in Bhupendra's house. He has stated that as they found the Samosa tasting different, they did not have it. He has stated that thereafter they all left the house of Bhupendra and on the way, Daljeet (PW 3) stopped and he left for his residence. He has further stated that on 17th December, 2008 at about 5.00 p.m. he met Hanumant Kirve (PW 1) who informed him that Seema, wife of Bhupendra had informed him that Bhupendra was not contactable. He has stated that he disclosed the entire afore-stated facts from 15th December to 17th December, 2008 to Hanumant (PW 1). Accordingly, they all went to the house of the Appellant but found it locked. He has further stated that there was a strong foul smell emanating from the house of the Appellant, on account of which he alongwith Hanumant (PW 1) and Rajesh (PW 6) went to the Dindoshi Police Station and informed the same to PSI Phadtare (PW 10). In the cross examination of PW.5-Chandrakant, it is sought to be suggested that deceased Bhupendra had died due to excess consumption of liquor. It was also suggested that it was Hanumant Kirve who had committed the murder of Bhupendra and that he was deposing at the instance of Hanumant Kirve and was being falsely involved in the said crime. It is pertinent to note, that in the cross examination of PW.5-Chandrakant, nothing has been elicited either by way of an omission or contradiction to discredit the testimony of the said witness.

9. The prosecution has also examined PW 3 Daljeet Singh, the driver of the deceased Bhupendra to prove the evidence of last seen. PW 3 Daljeet has corroborated the evidence of PW 5 Chandrakant with regard the entire sequence of events as they took place from 15th December to 17th December, 2008. He has in addition to the evidence disclosed by PW 5 Chandrakant, stated that due to his inebriated condition on 18th December, 2008, he found himself admitted in Navi Mumbai Municipal Hospital from where he came to be discharged after three days. He has further stated that on 21st December, 2008 he was required to be admitted to Guruprem Nursing Home for treating his throat infection, stomach pain and high blood pressure, which according to him he had suffered as a result of consumption of tea at the house of the Appellant. The prosecution has produced the medical case papers of PW.3-Daljeet, in support of the same. It is pertinent to note that the medical case papers show that PW.3-Daljeet on his admission to Navi Mumbai Municipal Hospital on 18th December, 2008 gave a history of consumption of an unknown substance and he came to be discharged after three days i.e. on 20th December, 2008. PW 3-Daljeet was again admitted to Guruprem Nursing Home on 21st December, 2008 upto 23rd December, 2008 and the history given to the Doctor on admission was of "attempted homicidal poison in tea and unconsciousness". The said discharge cards of both the Hospitals have been produced by the prosecution and exhibited as Exhibit- 49, 50 and 51. It is pertinent to note that the said medical certificates have also been admitted by the appellant. In the cross examination of PW.3-Daljeet Singh it is sought to be suggested that due to excessive consumption of liquor Bhupendra had fallen from the cot and had died. It was also suggested that no

tablets were administered to him as a result of which he had fallen asleep and was subsequently required to take medical treatment for the same. The said suggestions have been denied by the said witness. The cross examination of the said witness has not created a dent in the prosecution case in any way.

10. The prosecution had also examined Prashant (PW 4) i.e. the brother-in-law of the deceased Bhupendra, who had visited the flat of the deceased Bhupendra on 17th December, 2008 at the behest of his sister Seema (PW 8) i.e. the wife of deceased, as Bhupendra was uncontactable for two days. Prashant (PW 4) has deposed that when he went to the flat to look for Bhupendra, he found driver Daljeet Singh (PW 3) and the Appellant in the house. He has stated that on inquiry, the Appellant disclosed his name as Rajesh (false name). He further noticed that driver Daljeet Singh (PW 3) was in a totally inebriated condition. On seeing this, he asked the Appellant and the driver to leave the house of the deceased forthwith and locked the door of the house from outside and informed his sister Seema (PW 8) about the same.

11. PW 8 - Seema, wife of deceased Bhupendra has stated that as she could not contact deceased Bhupendra, she requested Hanumant Kirve (PW 1) who was a friend of her husband Bhupendra, to search for him. Pursuant to which, Hanumant Kirve (PW 1) came to the flat of the deceased and learnt that since 15th December, 2008, the deceased had not returned to his house and that one unknown person and Daljeet Singh (PW 3) had come to the house of Bhupendra. Hanumant Kirve (PW 1) on getting the said information, went to the house of Chandrakant (PW 5), who narrated the entire incident as deposed by him in the afore-stated para. Thereafter, Hanumant Kirve (PW 1) along with Chandrakant (PW 5), Rajan Shetye (PW 6) went to the flat of the Appellant. On reaching the said flat, they found the same to be locked and a strong odour of a decomposed body, emanating from the house of the Appellant. Hanumant Kirve (PW 1) immediately thereafter went to the police station and informed PSI Phadtare (PW 10). Pursuant to which, police party left for the house of the Appellant. According to the prosecution witnesses i.e. Hanumant Kirve (PW 1), Chandrakant (PW 5), Rajan Shetye (PW 6) and Phadtare (PW 16), on returning back to the flat of the Appellant, they saw the Appellant sitting on the platform near the building. On Chandrakant (PW 5) identifying him, he was called by the police, pursuant to which, he opened the door of his flat with his key and on entering the said flat, the body of deceased Bhupendra was found in a box in the cot in his room. PW 1 - Hanumant Kirve thereafter went to the Dindoshi Police Station and lodged a complaint/FIR, as against the Appellant, vide C.R. No. 1 for the offences under Sections 302 and 201 of the IPC, which was recorded by PW 10 - PSI Phadtare and is at Exhibit 16. All the prosecution witnesses corroborate each other with regard to the sequence of events. There is nothing elicited in the cross examination of any of the said witnesses to discredit their testimony.

12. PW 2-Nilesh Kamerkar-the owner of the said premises from where the dead body was found was examined by the prosecution to prove that the Appellant

was residing in the said premises/flat, pursuant to a leave and license agreement executed between the PW 2 - Kamekar and the Appellant. The said Leave and License Agreement has also been admitted by the Appellant.

13. Krishna Hindlekar (PW 9) a Panch witness and the Investigating Officer PSI Phadtare (PW 10) have been examined by the prosecution to prove the seizure of certain articles from the person of the Appellant and from a bag with the Appellant. The said articles were seized under a Panchanama, Exhibit-47.

14. The learned Counsel for the defence has assailed the Judgment on several counts. It was urged before us that the prosecution had not produced any cogent, succinct and reliable evidence to prove the complicity of the Appellant with the alleged offence; that the evidence of Daljeet Singh (PW 3) and Chandrakant (PW 5) with regard to last seen was untrustworthy and unreliable; that the evidence of Prashant (PW 4) did not inspire confidence and that the possibility of somebody else committing the alleged offence could not be ruled out. The learned A.P.P. supported the Judgment of the Trial Court and prayed for dismissal of the appeal.

15. It is not in dispute that the conviction in the present case is based solely on circumstantial evidence adduced by the prosecution. In *Sharad Birdhichand Sarda Vs. State of Maharashtra*, it was held that the onus is on the prosecution to prove that the chain of circumstances is complete and that falsity or untenability of the defence set up by the accused cannot be made the basis for ignoring any serious infirmity or lacuna in the case of the prosecution. The Apex Court then proceeded to indicate the conditions which must be fully established before a conviction can be made on the basis of the circumstantial evidence. These are:-

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

Thus, in a case of circumstantial evidence, the prosecution must establish each instance of incriminating circumstance, by way of reliable

and clinching evidence, and the circumstances so proved must form a complete

chain of events, on the basis of which, no conclusion other than one of guilt of the accused can be reached.

16. We have given our anxious considerations to the submissions made by the learned counsel for the Appellant and the learned APP for the State and after going through the evidence on record and keeping in mind the cardinal principles to be considered in a case resting on circumstantial evidence, we find that the prosecution has proved all the circumstances as against the Appellant.

17. On a careful perusal of the evidence of last seen, we find that there is nothing elicited in the cross examination of PW 3 - Daljeet and PW 5 - Chandrakant which creates a dent in the prosecution case so as to discard their testimony. We find their evidence to be natural, reliable and trustworthy. We also find that their testimony corroborates each other with regard to the sequence of events from 15th to 17th December, 2008, and on the point of last seen of deceased Bhupendra in the company of the Appellant. Both the witnesses have in no uncertain terms stated, that before they fell asleep, they had seen deceased Bhupendra consuming alcohol with the Appellant on 16th December, 2008 at about 11.00 to 11.30 p.m. and that thereafter, Bhupendra was not seen. Both, PW 3-Daljeet and PW 5 - Chandrakant have further stated that the Appellant on being asked about Bhupendra (deceased), gave them a false story with regard to his absence. Thus, the fact that the Appellant and Bhupendra were last seen together in the Appellant's flat consuming alcohol has been firmly established by these witnesses.

18. We also find, that the prosecution has successfully established that the Appellant was in possession of the said house on leave and license basis, at the relevant time. It is pertinent to note that the Appellant has admitted the inquest cum spot panchanama (Exhibit 17) with regard to the finding of the dead body from the box in a cot from his house. The Appellant has also admitted the leave and license agreement which clearly establishes that it is the Appellant alone who was in possession of the said flat and the evidence shows that it was the Appellant who opened the door of the flat with a key in his possession, in the presence of the police officer and other witnesses.

19. PW.8-Seema, wife of the deceased Bhupendra has identified the two gold rings, the wrist watch, one spectacle box with spectacles, one blue colour Nokia Mobile and one Indicom Mobile as belonging to her husband Bhupendra. It is pertinent to note that the Appellant has in his statement u/s 313 of Code of Criminal Procedure (question nos. 97 and 98) admitted, that the aforesaid articles were found in his possession and that they were seized by the police vide panchanama, however, has offered no explanation as to how the said articles came into his possession.

20. The medical evidence adduced by the prosecution shows that the body was so badly decomposed that it was not possible to opine the cause of death. The said post mortem report has been produced at Exhibit-32 and has been admitted

by the Appellant. Even the Histopathology report and the Viscera report were inconclusive, as the body was badly decomposed. Although the medical evidence does not show the exact cause of death, the circumstances on record adduced by the prosecution and the place from where the body was recovered clearly show that it was a case of homicidal death, and that the same was concealed by the Appellant in his house. Once it is proved that the deceased died an unnatural death and that the body was found in the Appellant's house, it was incumbent for the Appellant to offer an explanation in this behalf. The absence of any explanation by the Appellant as in the said case would lead to an inference that it was the Appellant alone who would be responsible for the same. The prosecution has thus proved beyond doubt that it was the Appellant who was in "exclusive occupation" of the flat. The Appellant has failed to discharge the burden cast on him u/s 106 of the Indian Evidence Act. Once it is proved that the deceased died an unnatural death and that the dead body was found in the premises occupied by the Appellant, law requires the Appellant to offer an explanation in this behalf and absence of any explanation would lead to an inference which would lead to a circumstance against the Appellant. It is pertinent to note that the Apex Court in the case of State of Maharashtra Vs. Suresh, , held that when the attention of the accused is drawn to such circumstances that inculcate him in relation to the commission of the crime, and he fails to offer an appropriate explanation or gives a false answer with respect to the same,

the said act may be counted as providing a "missing link" for completing the chain of circumstances. We may hasten to add that we have referred to the said decision only to highlight the fact that the appellant has not given any explanation whatsoever, as regards the incriminating circumstances put to him u/s 313 of the Code of Criminal Procedure.

21. In view of the above, a co-joint reading of the complete evidence and material on record, we find that the prosecution has proved; (i) that deceased Bhupendra was last seen in the company of the Appellant by PW 3 Daljeet and PW 5 Chandrakant; (ii) that the flat was occupied by the Appellant which was taken on leave and license basis from PW 2 - Kamerkar, which Leave and License Agreement has been admitted by the Appellant; (iii) The dead body was recovered from a box in a cot from the flat of the Appellant and the said spot and inquest panchanama, being Exhibit 17, has also been admitted by the Appellant; (iv) The circumstance in which the decomposed dead body was found was unnatural and that the only inference which could be drawn was that the deceased died a homicidal death; (v) Certain articles i.e. two gold rings belonging to Bhupendra, twenty tablets of Wyeth-Lorazepam in two strips and five tablets in loose condition, came to be seized in the personal search of the Appellant. The two gold rings have been identified by PW 8 Seema as that of her deceased husband; (vi) In the bag belonging to the Appellant, found in his house, certain articles belonging to the deceased i.e. two mobile phones, titan wrist watch, spectacle box with spectacles, have been identified by PW 8-Seema, wife of the deceased; (vii) The Appellant has not discharged the burden cast on

him u/s 106 of the Indian Evidence Act and has not furnished any explanation u/s 313 of Code of Criminal Procedure with respect to how the dead body of Bhupendra came to be found in his flat and similarly, as to how the articles of the deceased came in his possession.

22. The evidence of PW 3-Daljeet and PW 5-Chandrakant clearly shows that a stupefying substance was administered to both of them by the Appellant with an intent to commit or facilitate the commission of an offence. The Trial Court has rightly convicted the Appellant also for the offence u/s 328 of Indian Penal Code on the basis of the evidence of PW 3- Daljeet and PW 5-Chandrakant and also on the basis of the medical case papers of PW 3-Daljeet, which have also been admitted by the Appellant.

23. Upon careful examination of the evidence of the prosecution, according to us, the prosecution has proved the offences against the Appellant beyond reasonable doubt. The chain of circumstantial evidence is so complete that it excludes every hypothesis of the innocence of the Appellant and unerringly points to the guilt of the Appellant. In other words, the only conclusion which can be drawn, is that the Appellant and the Appellant alone who has committed the offence. We, therefore, find no merit in the Appeal of the Appellant and accordingly dismiss the Appeal. Appeal is accordingly dismissed, confirming the conviction and sentence of the Appellant.