
(2013) 03 BOM CK 0106
In the Bombay High Court
Case No : Criminal Appeal No. 1197 of 2007

Sachin Budhaji Shirke

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 11-03-2013

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 392, 397

Citation : (2013) 3 ABR 437 : (2013) ALLMR(Cri) 2050 : (2014) 3 BomCR(Cri) 482

Hon'ble Judges : V.K. Tahilramani, J;P.D. Kode, J

Bench : Division Bench

Advocate : Arfan Sait, for the Appellant; P.S. Hingorani, APP, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Tahilramani, J.—This appeal is directed by the appellant-original accused against the judgment and order dated 29.04.2005 passed by the learned 5th Ad hoc Additional Sessions Judge, Sewree, Mumbai in Sessions Case No. 1 of 2005. By the said judgment and order, the learned Sessions Judge convicted the appellant u/s 392 r/w 397 and u/s 302 of IPC and sentenced him as follow:--

The learned Sessions Judge also directed that the substantive sentences of imprisonment shall run concurrently. The prosecution case briefly stated, is as under:

First informant PW 4 Jaidev and deceased Govind were friends. They were residing and working together. On the day of the incident at about 05.00 a.m., they went to chowpatty. They were standing on sand, talking to each other. At that time, the appellant came from backside and put his hand in the back pocket of Govind. Govind pushed away his hands. Thereafter, scuffle took place between Govind and the appellant. At that time, the appellant took out a knife. On seeing the knife, Govind and Jaidev got frightened, hence, they started running. PW 4 Jaidev climbed up the steps. He started crying and shouting for help. From the

steps, he saw that the appellant was assaulting Govind with a knife. The appellant then shut the knife, kept it and thereafter he took out the money purse from the pocket of Govind and also took out shoes of Govind. The appellant then started running away. At that time, 2-3 persons were chasing the accused. The appellant was caught by 2-3 persons near the bridge of Marine Lines. Thereafter, PW4 Jaidev returned to the spot where his friend was lying near the steps of seashore. At that time, he saw the Police were lifting him and putting him in the police vehicle. PW 4 Jaidev went along with them to G.T. Hospital. In the hospital, Govind was declared dead. F.I.R. of PW 4 Jaidev (Exh. 18) came to be recorded. The appellant came to be arrested. Dead body of Govind was sent for postmortem. During the post-mortem, following injuries were noticed on the dead body of Govind:--

(1) Stab injury over chest anterior midline oblique over 4th IC level of sternum of size 2 x 1 cm x cavity deep margin inverted, both angles acute. On dissection, sternum is cut and muscles of 4th IC space incised near sternum pericardium incised and passed upto (Rt) atrium show stab injury over anterior surface.

(2) Stab injury over chest (Lt) side 4 cm from midline in 5th IC space nearly vertical of size 2 cm x 1 cm x heart chamber deep. On dissection 5th rib, skim, subcutaneous tissue, muscles of 5th IC space, pericardium and (Lt) vertical muscle and antero posterior direction. Margins are invested, both angles are acute.

(3) Stab injury over (Lt) sub-costal margin lateral part of chest oblique, margins inverted both angles acute of size 2.5 x 1.5 cm x cavity deep on dissection skin, sub-cut tissue, muscles are incised spleen is incised and stomach shows perforation through and through. Infiltration seen in the soft tissue surrounding back.

(4) Stab injury over (Rt) size chest in axilla of size 2 x 1 cm x 4 cm deep, margin inverted, angles acute. On dissection skin, sub-cut tissue, muscles are incised upto upper lobe of wing.

(5) Abrasion on (Lt) side chest seen above nipple of size 1 x 1 cm reddish scab seen,

(6) Abrasion on posterior aspect of (Rt) wrist of size 1 X 1 cm reddish scab seen.

On internal examination, it was found that left wing lower lobe and right upper lobe of the lungs were cut. Due to this, the lungs had partially collapsed. Pericardium showed incised wound and left ventricle showed through and through stab injury. Right atrium showed puncture wound on anterior surface.

2. Charge came to be framed against the appellant under Sections 392, 392 r/w 397 and 302 of IPC. The appellant pleaded not guilty to the said charge and claimed to be tried. The defence of the appellant 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 appellant as stated in paragraph 1

above. Hence, this appeal.

3. We have heard the learned Advocate for the appellant and the learned APP 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 the appellant stabbed Govind with a knife and caused his death and also robbed him.

4. The conviction is mainly based on the evidence of three eye-witnesses i.e. PW 2 Ashok, PW 3 Kallu and PW 4 Jaidev who is also the first informant in the present case. PW 4 Jaidev has stated that on the day of the incident at about 05.00 a.m., he along with Govind went to chowpatty. They were standing on sand, talking to each other. At that time, the appellant came from backside and put his hand in the back pocket of Govind. Govind pushed away his hands. Thereafter, scuffle took place between Govind and the appellant. At that time, the appellant took out a knife. On seeing the knife, Govind and Jaidev got frightened, hence, they started running. PW 4 Jaidev climbed up the steps. He started crying and shouting for help. From the steps, he saw that the appellant was assaulting Govind with a knife. The appellant then shut the knife, kept it and thereafter he took out the money purse from the pocket of Govind and also took out shoes of Govind. The appellant then started running away. At that time, 2-3 persons were chasing the accused. The appellant was caught by 2-3 persons near the bridge of Marine Lines. Thereafter, PW4 Jaidev returned to the spot where his friend was lying near the steps of seashore. At that time, he saw the Police were lifting him and putting him in the police vehicle. PW 4 Jaidev went along with them to G.T. Hospital. In the hospital, Govind was declared dead. F.I.R. of PW 4 Jaidev (Exh. 18) came to be recorded.

5. PW 2 Ashok has stated that every day in the morning at about 04.00 a.m., he went to catch fish in the sea. On the day of the incident also, he had gone to catch fish. His cousin brother PW 3 Kallu and one Bhola came there. They heard shouting of one boy, hence, they went in that direction. They saw the appellant assaulting one other boy with a knife. When PW 2 Ashok went to the spot where the appellant was assaulting another boy, the appellant pointed knife to him and threatened to go away or otherwise he would kill him. Out of fear, this witness went to call his cousin brothers and came back with them. At that time, they saw the appellant running. All three of them i.e. PW 2 Ashok and his cousin brothers chased the appellant. They caught him near the bridge of Marine Lines. People gathered there and beat the appellant. Till that time, Police also arrived at the spot. They handed over the appellant to the Police. The evidence of PW 3 Kallu is on the same lines as that of PW 2 Ashok. The evidence of these three eye-witnesses shows that the appellant assaulted Govind with a knife. The evidence of PW 4 Jaidev shows that the incident of assault with a knife took place as the appellant was trying to rob Govind and Govind resisted the same. Thereafter, the appellant assaulted Govind and robbed him. The evidence of PW 2 Ashok, PW 3

Kallu and PW 4 Jaidev shows that the appellant assaulted Govind, Their evidence also shows that the appellant was chased and caught red handed on the spot. Nothing has been elicited in the cross-examination of any of these three eye-witnesses so as to disbelieve their testimony, hence, we have no hesitation in relying on the same.

6. The prosecution is also relying on the evidence of PW 6 Panch Witness Rahimali. PW 6 Rahimali has stated that at the Police Station, knife and wallet came to be seized from the appellant. The wallet was found in the pocket of the appellant. This witness has identified the knife and the wallet. PW4 Jaidev has also identified the knife which was in the hands of the appellant at the time of the incident. It is pertinent to note that PW 4 Jaidev has also identified the wallet of the deceased which was found in the pocket of the appellant. Thus, finding of the wallet of the deceased in the pocket of the appellant is a strong incriminating circumstance which goes against him.

7. Blood stained knife seized from the appellant was sent to C.A., C.A. report (Exh. 30) shows that the knife had blood stains of "B" group. The clothes of the deceased were also stained with blood of "B" group. This shows that blood group of the deceased was found on the knife which was seized from the appellant.

8. Mr. Sait, learned Advocate appointed for the appellant has submitted that PW 4 Jaidev has stated that the appellant had taken away the wallet and shoes of deceased Govind. He submitted that though the wallet was found with the appellant, the shoes were not found. He submitted that this raises doubt about prosecution case. As far as this aspect is concerned, the evidence of PW 2 Ashok and PW 3 Kallu shows that when they along with one another person chased the appellant and caught him. At that time, people gathered there and beat the appellant. The appellant must have obviously taken away the shoes of Govind as they were of good quality, otherwise there was no reason for him to take the shoes of deceased Govind. As the shoes were of good quality, someone from the crowd might have taken away the shoes or the shoes could not be traced in the melee. In our opinion, not finding of the shoes is not such a circumstance as would throw doubt on the genuineness of the prosecution case. Looking to the evidence on record, we find that there is sufficient evidence to connect the appellant with crime. Hence, we find no merit in this appeal. It is, therefore, ordered as follows:-- ORDER

i. The appeal is dismissed.

ii. Office to communicate this order to the Superintendent of prison where the appellant is lodged and to the appellant-original accused.

At this stage, we must record our appreciation for Advocate Mr. Sait, who is on the High Court Legal Services Committee, appointed to represent the appellant in this appeal. We found that he had meticulously prepared the matter and he has very ably argued the appeal. We quantify total legal fees to be paid to him in this appeal by the High Court Legal Services Committee at Rs. 2200/-. The said fees

be paid to Advocate Mr. Sait within three months from today.