

(2016) 09 BOM CK 0130
In the Bombay High Court
Case No : Criminal Appeal No. 810 of 2003

State of Maharashtra

APPELLANT

Vs

Mukesh S/o. Yogiraj Dongarge New Nanded

RESPONDENT

Date of Decision : 01-09-2016

Acts Referred:

Evidence Act, 1872 — Section 3

Penal Code, 1860 (IPC) — Section 302, Section 34

Citation : (2017) 1 AIRBomRCri 291

Hon'ble Judges : A.V. Nirgude and V.L. Achliya, JJ.

Bench : Division Bench

Advocate : Mr. R.B. Bagul, A.P.P, for the Respondent/State in Criminal Application No. 4446 of 2014; Mr. R.B. Bagul, A.P.P, for the Applicant/State in Criminal Appeal No. 810 of 2003; Mr. S.S. Choudhari, Advocate, for the Respondent No. 1 in Criminal Appeal No. 810

Final Decision : Dismissed

Judgement

A.V. Nirgude, J. - The State of Maharashtra has filed this appeal challenging judgment and order dated 04.08.2003 in Sessions Case No.161 of 1998 passed by learned Additional Sessions Judge, Nanded. Respondent/accused were charge-sheeted in Crime No.39 of 1998 of Nanded Rural Police Station for offence punishable under Sections 302 r/w 34 of the Indian Penal Code.

2. It was alleged that the accused had committed murder of one Siddharth on 04.03.1998 at about 08.00 p.m. The prosecution examined in all thirteen witnesses.

3. P.W.5-Hiraman is father of Siddharth, the victim in this case. He stated that at the time of incident Siddharth was a student of 11th standard and was attending Coaching Classes between 07.00 p.m. to 08.00 p.m. every day. On 04.03.1998 at about 07.00 p.m. or so, he received telephone call from Government Hospital, Nanded informing him that his son Siddharth was serious and he should come to hospital. He went to the hospital and found Siddharth dead. He noticed one

injury on Siddharth's neck. While he was going back home, one Sunil Wadgaonkar-P.W.7 met him. Sunil (P.W.7) told him as to how Siddharth was murdered. Hiranman and Sunil then went to police station. Hiranman lodged a complaint.

4. P.W.7 is Sunil. He stated that he knew Siddharth. On 03.03.1998 at about 09.00 p.m. Siddharth met him and told that Datta Patil had collision with one girl due to which Anil and accused Mukesh quarreled with Datta. Siddharth further told him that Siddharth intervened in the quarrel. So accused Mukesh and accused Anil threatened him of consequence on next date. Sunil then told Siddharth that Anil - the elder brother, was known to him and he would help in settling the dispute. On 04.03.1998 at about 08.00 p.m. while Sunil was going towards the Market, he met Siddharth the victim, accused Mukesh, Anil and accused Bandu. They were walking towards the library. Sunil then told them that they should not quarrel and that they were still student. P.W.7-Sunil crossed few steps ahead and then heard some shouts. He looked back and noticed that Anil had caught hold of Siddharth's collar and accused Mukesh was beating Siddharth by hands. He also noticed that accused Bandu delivered a knife blow over Siddharth's body. Siddharth shouted and fell down. Siddharth sustained bleeding injury on his neck. P.W.7-Sunil said that he tried to catch Anil, Mukesh and Bandu. So he chased them but could not catch them. He came back to the spot and learnt that police had already shifted Siddharth elsewhere. Thereafter, he learnt that Siddharth died. In the cross-examination this witness admitted that after the incident he did not go to police station and his statement was not recorded. He admitted further that he went to hospital at about 11.30 p.m. where family members of Siddharth were present.

5. P.W.8 is Suresh, who stated that on 04.03.1998 at about 07.45 p.m. while he was walking towards the library, he noticed three boys were beating one boy. He identified the assailants as accused Mukesh, accused Bandu and Anil. He also identified the victim as Siddharth. He then noticed that Bandu took out a knife and delivered a blow to Siddharth. Siddharth sat down. The assailants ran away. One Sanjay, friend of Suresh came there riding a motorcycle. Suresh (P.W.8) and Sanjay then took Siddharth on motorcycle and went towards the police station near Water Reservoir. Siddharth started getting convulsions. So, motorcycle was stopped and an auto-rikshaw was called. One Bansode and Prasanjeet Bansode thereafter accompanied Siddharth to the police station in the auto-rickshaw. On the other hand Suresh (P.W.8) went to the house of Siddharth to inform his family members. P.W.8-Suresh went to Siddharth's house and found Siddharth's sister in the house. He did not tell her about the incident. But went to house. Thereafter, Suresh met Siddharth's father on road. He told him that Siddharth was taken to the police station. He then went to the police station where he learnt that Siddharth was taken to the hospital. He went to the Hospital and learnt that Siddharth died.

6. P.W.9-Sanjay is one more eye-witness who stated that at about 08.00 p.m. he

saw mob of 15-20 boys near the library. He noticed that Siddharth was being held by two boys and one boy who was short in height delivered knife blow over the Siddharth's neck. Siddharth sat down. The assailants ran away. He tried to chase the assailants but, in vain.

7. P.W.10 is Dr. Satyanarayan Punpale. He performed the postmortem examination of Siddharth dead body. He noticed one wedge shape stab injury on the left side of the Siddharth's neck. On dissection of the neck he noticed injuries to various internal organs including common carotid. He said that the injury was sufficient in ordinary course of nature to cause death.

8. Learned Judge of the trial Court did not believe eye-witness account and acquitted the accused.

9. The question is - whether the eye witness account inspires confidence? The answer is in the negative. The depositions which are quoted above are quite haphazard. They are inconsistent. These witnesses appear to us as got-up witnesses. The two witnesses who stated that after the incident they tried to catch hold the assailants are not worthy of reliance because in an incident of this nature natural reaction is to help the injured. These two witnesses kept chasing the assailants for such a long time that when they came back they did not find Siddharth there. Other two witnesses also do not inspire confidence, because they did not extend help to Siddharth even when he noted the incident then. The evidence that came on record was not trustworthy. We are not inclined to take any other view in the matter. The appeal, therefore, should fail.

10. The Criminal Appeal is dismissed.

11. In view of dismissal of Criminal Appeal, connected Criminal Application does not survive and stands disposed of.