

Bombay High Court

Sunil S/O Manoharrao Pandhare (In ... vs The State Of Maharashtra, Thr. ... on 19 December, 2017

Bench: Ravi K. Deshpande

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apeal301.16.odt

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

NAGPUR BENCH, NAGPUR

CRIMINAL APPEAL NO.301 OF 2016

Sunil s/o. Manoharrao Pandhare,  
Aged about 34 years, Occ.  
Contractor, r/o. Waghoba Chowk,  
Madekar Building, Tukum,  
Chandrapur, Tq. and Distt.  
Chandrapur (In Nagpur jail).

.....

APPELLANT

// VERSUS //

The State of Maharashtra,  
Through Police Station Officer,  
P.S., Aheri, Distirct Gadchiroli.

.....

RESPONDENT

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Mr.R.M.Daga, Advocate for the Appellant.  
Ms S.S.Jachak, A.P.P. for Respondent/State.  
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CORAM : R.K.DESHPANDE  
AND  
M.G.GIRATKAR, JJ.

DATED : 19.12.2017.

ORAL JUDGMENT (Per M.G.Giratkar, J) :

1. By this appeal, appellant has assailed the Judgment of conviction, in Sessions Case No.89 of 2014, dated 11.7.2016, by Sessions Judge, Gadchiroli. He is sentenced to suffer imprisonment for life and to pay a fine of Rs.5,000/-, in default to suffer rigorous imprisonment for six months for the offence punishable under Section 302 of the Indian Penal Code.

2. The case of prosecution against the appellant, in short, is as under :

The deceased was a Contractor. He was doing contract work with Public Works Department. Accused was partner of the deceased. Accused was demanding profit of contract work. One Dilip Deshmukh was also partner. Dilip Deshmukh and accused beat the 3 apeal301.16.odt deceased and demanded Rs.40,000/-. It is alleged in the report that deceased had lodged report in the Police Station on 16.8.2014 stating that the deceased had gone to bring his sons Ganesh and Gaurav from the School. At about 12.30 p.m., he went towards school. Accused stabbed the deceased by knife and ran away. One person informed the wife of deceased/complainant. She went to the spot of incident. Thereafter, she lodged the report. Investigating Officer P.I. Subhash Murlidhar Dhawale (PW-10) went to the spot of incident, prepared spot panchanama, recorded statements of witnesses, sent dead body for post mortem, arrested accused and recovered weapon of crime as per the confessional statement of accused. He sent seized property to Chemical Analyser, Nagpur. After complete investigation, he filed charge sheet before the Court.

3. Charge was framed at Exh.7. Same was read over and explained to the accused. Accused pleaded not guilty and claimed to be tried. Defence appears to be of total denial and false implication.

4. The trial Court has examined the following witnesses :

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- a) Malla Reddy Vitha Reddy Yemnurwar (PW-1) (Exh.12).
- b) Shankar Patruji Yerne (PW-2) (Exh.14).
- c) Irfankhan Chandkhan Pathan (PW-3) (Exh.16).
- d) Sanjay Bhaskarrao Channe (PW-4) (Exh.18).
- e) Atul Kawduji Atram (PW-5) (Exh.20).
- f) Akshay Sanjay Karpe (PW-6) (Exh.21).
- g) Dr.Manish Ashok Badnaware (PW-7) (Exh.22).
- h) Mahesh Shankar Lingampalliwar (PW-8) (Exh.28).
- i) Dilip Vitthalrao Deshmukh (PW-9) (Exh.31).
- j) Subhash Murlidhar Dhawale (PW-10) (Exh.32).

- k) Jaimala Govind Gite (PW-11) (Exh.64).
- l) Ravi Ratnaiyya Nelkudri (PW-12) (Exh.66).

5. Statement of accused under Section 313 of the Code of Criminal Procedure was recorded. He has denied material incriminating evidence against him. After hearing prosecution and defence, learned trial Court convicted the appellant, as aforesaid.

6. Heard Mr.R.M.Daga, learned Counsel for the appellant. He has pointed out evidence on record and submitted that there is no evidence to show that accused committed murder of deceased 5 apeal301.16.odt Govind Prabhakar Gite by means of knife. Witnesses have not stated anything against the appellant. Learned Counsel has submitted that the trial Court has wrongly relied on the evidence of Investigating Officer Subhash Dhawale (PW-10) and wrongly convicted the appellant.

7. Heard Mrs.S.S.Jachak, learned A.P.P. for the Respondent/State. She has pointed out evidence of Jaimala Govind Gite (PW-11) and submitted that there was enmity between the appellant and deceased. Motive is proved. Learned A.P.P. Has pointed out Chemical Analyser's report. It is submitted that knife and clothes of deceased were stained with blood of blood group 'A'. Blood group of deceased was 'A'. Hence, he is rightly convicted by the trial Court.

8. There is no dispute that deceased died homicidal death. Evidence of Medical Officer Dr.Manish Ashok Badnaware (PW-7) shows that he conducted post mortem on the dead body of Govind Gite and found sixteen injuries. As per his opinion, cause of death was cardio respiratory arrest due to haemorrhagic shock due to injuries to vital organs i.e. left lung and heart due to multiple stab 6 apeal301.16.odt wound. Accordingly, he issued Post Mortem report (Exh.25). This evidence shows that deceased died homicidal death.

9. Prosecution has to prove that appellant was the author of crime. From the perusal of evidence of all the witnesses, there is nothing to show incriminating against the appellant. Wife of deceased - Jaimala Gite (PW-11) has only stated that appellant was demanding profit in the business of Contractorship. There was quarrel between the appellant and deceased. Except this, she has not stated anything more. Prosecution has to prove the chain in case of circumstantial evidence.

10. Both eye witnesses have not supported the case of prosecution. Other witnesses have not stated anything against the accused. Jaimala (PW-11) has stated that before the incident there was quarrel between the appellant and deceased on account of business transaction. Nobody stated before the Court that he saw the appellant beating the deceased on the day of incident.

11. Learned trial Court relied on the evidence of Investigating Officer Subhash Dhawale (PW-7). Learned trial Court 7 apeal301.16.odt came to the conclusion that weapon was seized from the appellant. It was sent to Chemical Analyser. From the C.A. Reports (Exh.4 and 5), it is clear that

blood of blood group 'A' of deceased was found on the knife and clothes of appellant.

12. It is pertinent to note that recovery itself is not proved by prosecution. Both the panchas are on confessional statement of appellant and recovery of weapon. Both panch witnesses have not supported to the prosecution. Both the panchas have not stated in their evidence that appellant confessed to show the weapon used in the crime. They did not state before the Court that appellant discovered knife and it was seized in their presence. Therefore, recovery of weapon itself is not proved. Learned trial Court has wrongly relied upon the sole testimony of Investigating Officer Subhash Dhawale (PW-10).

13. Regarding the Chemical Analyser's report, it is clear from the C.A. Reports (Exh. Nos. 4 and 5) that only blood of deceased was sent to Chemical Analyser. There is nothing on record to show that blood of accused was extracted by the Medical Officer and it was sent to C.A., Nagpur. From the perusal of Exh. Nos. 4 and 5, it is 8 apeal301.16.odt apparent that they do not show the blood sample of appellant. Prosecution has not explained as to why blood sample of appellant was not taken during investigation and why it was not sent to C.A.

14. C.A. Report is not a substantive piece of evidence. It is only a corroborative piece of evidence. Moreover, recovery of weapon itself is doubtful. Both the panchas on recovery of weapon and confession of appellant have not supported the prosecution. The sole testimony of Investigating Officer is not sufficient to convict the appellant for the offence of murder.

15. When the offence is serious then more burden is on the prosecution to prove the guilt of the accused beyond reasonable doubt. From the perusal of evidence on record, it is clear that prosecution has failed to prove the guilt of accused beyond reasonable doubt. Appellant is, therefore, entitled for acquittal. With these findings, we proceed to pass the following order.

// ORDER // The appeal is allowed.

9 apeal301.16.odt The impugned Judgment in Sessions Case No.89 of 2014, dt.11.7.2016 is hereby quashed and set aside. Appellant is acquitted of the offence punishable under Section 302 of the Indian Penal Code.

The appellant is in jail. He be released forthwith if not required in any other crime or case.

Fine amount, if paid, be refunded to the appellant.

Record and proceedings be sent back to the trial Court.

JUDGE

JUDGE

[jaiswal]

