

GANGARAM SHANTARAM SALUNKHE

A

v

THE STATE OF MAHARASHTRA

NOVEMBER 22, 2006

[S.B. SINHA AND MARKANDEY KATJU, JJ.]

B

Penal Code, 1860—Section 302 read with section 34—Conviction under—Upheld by High Court—Interference with—Held: Evidence was consistent and corroborated by medical evidence—Dying declaration also could not be discarded—There being few minor discrepancies, does not call for interference with the order of High Court—Evidence Act, 1872—Section 34.

C

According to the prosecution case, accused nos. 2, 3 and 4 stopped vehicle on which B and PW4 were proceeding. Accused No. 3 caught hold of B and accused no. 2 and accused no. 4-appellant assaulted him with knife. PW4 tried to save the deceased but was threatened. B also tried to save himself, but was assaulted by accused nos. 2 and 3. B was taken to the hospital. Doctor examined him and declared him dead. PW 4 got the complaint registered. Trial Court convicted and sentenced accused nos. 1 to 4 under section 302 read with section 34 and section 120B IPC. High Court acquitted accused no. 1; however, it upheld the conviction of others. Hence, the present appeal.

D

E

Dismissing the appeal, the Court

HELD: 1.1. In the instant case, the evidence is consistent and is corroborated by the medical evidence. A few mere minor discrepancies here and there do not help the case of the appellant. [295-C]

F

1.2. There are two eye witnesses-PW4 and PW5. PW4 clearly identified the appellant as the unknown man in his deposition before the trial court, and there is no reason why PW 4 should falsely implicate him. The evidence of PW4 is also corroborated by the evidence of PW5, who is a neutral person being the driver of the Vehicle. There was no reason for PW5 to falsely implicate the appellant. PW5 clearly stated in his evidence that the appellant inflicted wounds on the deceased. The evidence of PW4 and PW5 finds further corroboration in the dying declaration made by the deceased to PW6.

G

[294-D-G]

H

A 1.3. The Doctor only stated that it was possible that the deceased may have become unconscious instantaneously after sustaining the wounds. However, there is a difference between something being possible and something being probable or certain. PW6 before whom the dying declaration was recorded, stated that the deceased had given his dying declaration before he reached the hospital. Thus, there is no reason to disbelieve the dying declaration. [295-A-C]

B CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 241 of 2006.

C From the Final Judgment and Order dated 17-10-2005 of the High Court of Judicature at Bombay, Bench at Aurangabad in Cri. A. No. 60 of 1992.

Sudhanshu Choudhary and Naresh Kumar for the Appellant.

V.N. Raghupathy (for Aniruddha P. Mayee), for the Respondent.

D The Judgment of the Court was delivered by

MARKANDEY KATJU, J. This appeal has been filed against the impugned judgment and order of the Bombay High Court (Aurangabad Bench) dated 17.10.2005 in Criminal Appeal No. 60 of 1992 by which the High Court has affirmed the sentence of life imprisonment imposed by the Trial Court by judgment dated 20.2.1992 under Section 302 read with Section 34 IPC as well as fine of Rs.200/-, in default of which two months R.I. was also awarded.

E Heard the learned counsel for the parties and perused the record.

F There were four accused originally before the Trial Court namely (1) Anil Shivram Pawar, (2) Manilal Hiram Chaudhari, (3) Premraj Hiram Chaudhari and (4) Gangaram Shantaram Salunkhe (the appellant in the present case.) All the four accused had been convicted by the Trial Court but in appeal the High Court acquitted accused no. 1 but maintained the conviction of accused no. 2, 3 and 4 under Section 302 read with Section 34 I.P.C. In the present case the appellant is only accused no. 4 Gangaram Shantaram Salunkhe @ Bapu.

G The gist of the prosecution case is that on 13.2.1991 Bhaulal Jadhav the deceased along with PW4 Lotu Eko Patil was proceeding from Phuphanagari to Jalgaon on bike Bajaj M-80 and when they reached on a way to Jalgaon near Khedi Phata at a distance of 3 kms. the appellants, who were in Maruti H Van parked by the side of road got down. It is further alleged that the accused

no. 2, 3 and 4 then stopped vehicle on which Bhaulal and PW4 were proceeding. The accused No. 3 Premraj caught hold Bhaulal and accused no. 2 and 4 i.e. Manilal and Gangaram assaulted Bhaulal with knife. The complainant PW4 then tried to rescue Bhaulal, however, accused no. 2 Manilal extended threats to PW4 and, therefore, PW4 started proceeding towards Jalgaon. Bhaulal was also trying to save himself, however, the accused no. 2 and 3 chased him and assaulted with weapon like knife. PW4 then immediately went to Taluka Police Station Jalgaon on a vehicle of some another person. PW14 Hamid Khan Miya Khan Pathan was holding charge of Station Diary at the relevant time at about 11.45 a.m.. PW4 then disclosed him about the incident that Bhaulal Jadhav is assaulted by Manilal, Premraj and one unknown person. Entry in the Station Diary to that effect was immediately taken by PW14 and Police Constable namely Ukhardu Koli, Sharad Vispute and Pramod, who were on duty at Police Station, were immediately sent to the spot along with PW4, however, by that time injured Bhaulal Jadhav was taken to the hospital in a tractor by one Bharat Jadhav as he was also proceeding to Jalgaon and that tractor was also owned by Bhaulal. The Police Constable Ukhardu Koli and others and complainant then proceeded to the hospital. Doctor from hospital examined Bhaulal and declared him dead and, therefore, Police Constable Ukhardu Koli gave information to the Taluka Police Station approximately at about 12.45 noon about the death of Bhaulal and PW14 thereafter recorded complaint of PW4 and on the basis of said complaint registered crime No. 16/1991 against the present appellants for the offence punishable under Section 120-B, 302 read with Sections 34 and 341, 506 of I.P.C. PW17 Dhanraj Walukar took up the investigation of the said crime. He visited the hospital, held inquest over the dead body, referred the same for post mortem, recorded statements of certain witnesses. Thereafter investigation of the said crime was taken over by P.I. PW15 P.S. Suryawanshi who arrested accused no. 1, interrogated him and attached revolver at his instance. Record further shows that PW15 thereafter handed over investigation of the said crime to PW17 who then made attempts to arrest accused, as the accused no. 2, 3 and 4 were absconding he succeeded in arresting accused no. 2 Manilal only on 22.3.1991. During the course of interrogation and while accused Manilal was in the custody of Police he made discloser statement, showed his willingness to produce the weapon from the place where it was concealed at Saptashringi Gadh. Memorandum to that effect is prepared. He then took police and panchas to the said place and produced knife. Even the accused also showed his willingness to show the place where he burnt blood stained clothes which were on his person. He then took police to Nala and shown the place.

A

B

C

D

E

F

G

H

A Panchnama to that effect is prepared and burnt articles were attached by the police. PW17 then made attempt to arrest accused no. 3 and 4, however, their whereabouts were not known and some where in the month of July, 1991 both accused no. 3 and 4 obtained anticipatory bail. Record further shows that initially police after completing investigation filed charge sheet against accused no. 1 and 2 showing the accused no. 3 and 4 absconding and after formal arrest of accused no. 3 and 4 subsequently charge sheet was submitted and accordingly two separate cases i.e. Sessions Case No. 88/1991 and 196/1991 were registered.

C The Trial Court after considering the evidence on record convicted the accused under Section 302 read with Section 34 and Section 120B I.P.C. which conviction was upheld in appeal by the High Court.

D In this case there are two eye witnesses PW4 and PW5. As regards the evidence of PW4, he has stated that at the time of the incident the accused no. 2 Manilal Hiranman Chaudhari and accused no. 3 Premraj Hiranman Chaudhari and one unknown person got down from the Maruti Van. He has further stated that the unknown man gave a blow with an iron sickle on the head of the deceased. He further stated that thereafter the unknown man got hold of the deceased and accused no. 2 and 3 inflicted blows on him with iron knife and sickle.

E It is submitted by learned counsel for the appellant that since the name of the appellant was not mentioned by PW4 hence the chance of false implication of the appellant in this case cannot be ruled out.

F We do not agree with this contention. PW4 clearly identified the appellant as the unknown man in his deposition before the Trial Court, and there is no reason why PW4 should falsely implicate him.

G The evidence of PW4 is also corroborated by the evidence of PW5, who is a neutral person being the driver of the Maruti Van. There was no reason for PW5 to falsely implicate the appellant. PW5 has clearly stated in his evidence that the appellant inflicted wounds on the deceased.

The evidence of PW4 and PW5 find further corroboration in the dying declaration made by the deceased to PW6.

H Learned counsel for the appellant tried to assail the veracity of the dying declaration through the evidence of the Doctor who conducted the

post mortem examination. The Doctor stated that it was possible that after sustaining the wounds the deceased may have gone into an unconscious state instantaneously. A

We note that the Doctor only stated that it was *possible* that the deceased may have become unconscious instantaneously. However, there is a difference between something being possible and something being probable or certain. PW6 before whom the dying declaration was recorded, stated that the deceased had given his dying declaration before he reached the hospital. Thus, we see no reason to disbelieve the dying declaration. B

The evidence in this case is consistent and is corroborated by the medical evidence. A few mere minor discrepancies here and there do not help the case of the appellant. C

There is no force in this appeal. Hence, it is dismissed.

N.J.

Appeal dismissed.

D