

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL Nos. 1942-1943 OF 2009

SANDEEP @ KHANDU SUDHAKAR SARODE & ANR. Appellant(s)

VERSUS

THE STATE OF MAHARASHTRA Respondent(s)

WITH

CRIMINAL APPEAL NO. 465 OF 2010

WITH

CRIMINAL APPEAL NO. 1944-1945 OF 2009

O R D E R

1. These appeals arise out of the impugned Judgment and Order dated 20.04.2007 passed by the High Court of Bombay, Bench at Aurangabad, in Criminal Appeal No.162 of 2005 and Criminal Appeal No. 168 of 2005, whereby the High Court has upheld the conviction and sentence of Accused Nos. 1, 2, 3, 4, 6, 7, 9 and 12 under Section 302 read with 149, 143, 144, 147, 148, 506 IPC, as awarded by the trial court, and sentenced the accused to undergo Life Imprisonment along with fine, however, acquitting Accused No.5 from all the charges leveled against him.

2. The brief facts of this case are as follows :-

The incident took place on 07.03.1998. There were heated exchange of words and abuses between the victims and the appellants in an altercation during a cricket

match in Rangargalli area. Dhananjay and Santosh, the victims (both deceased) were assaulted by the appellants with sharp weapons. They were taken to the Mural Hospital at Pathardi where they were declared brought dead.

3. On the same day, i.e. on 07.03.1998 at 11.45 PM, the First Information Report was lodged by the informant - Sanjay (PW4) at Police Station Pathardi against the appellants. Subsequently, on 08.03.1998, all the accused were arrested and the investigation was carried out by Shivnath Shinde, Investigating Officer (PW12).

4. On 08.03.1998, the autopsy was conducted on the bodies of the deceased Dhananjay and Santosh. The chargesheet was filed in the case and the matter was transferred to the Sessions Court at Ahmed Nagar on 09.06.1998.

5. The Postmortem was conducted on the dead bodies of the victims. The injuries caused on the victim Dhananjay reveals as under :-

"1. Abrasion on left face in middle below eye region $\frac{1}{4}$ X $\frac{1}{4}$ cm.

2. Abrasion on right posterior elbow $\frac{1}{4}$ X $\frac{1}{2}$ cm.

3. Penetrating wound on left flank region mid auxiliary region 1 nipple line 1 cm X $\frac{1}{2}$ cm. (Depth cannot be judged from outside) bleeding present.

4. Penetrating wound on right lower rib region in anterior auxiliary line, oblique 1 cm X ½ cm depth cannot be judged from outside.

5. Abrasion on right great toe ½ X ¼ cm.

In Coloumn no. 20, a wound is found on left flank region in muscles corresponding to injury no. 3 above. In Col. No. 21 a wound corresponding to injury no. 4 above in muscle and pertionela region is found P.W.No. 5 Dr. Ramprasad Kulkarni has clearly opined that the death of Dhananjay is caused due to cardio respiratory arrest due to haemorrhagic shock due to above injuries i.e. injury on major blow vessel."

The injuries caused on the victim Santosh reveals as under:-

"1. Incised wound on mid frontal region verticle 7 cm X 1 cm X bone deep - bleeding stains present.

2. Oblique wound on left chest just lateral to nipple 1 cm X ½ cm X depth cannot be judged from outside.

3. Abrasions left lateral arm ½ X ½ cm.

4. Abrasion left dorsal hand 2 X 1 cm.

5. Abrasion on left anterior forearm 2 X 1 c.m.

6. Abrasion on right lateral elbow 2 X 3 cm.

Muscle injury corresponding to injury no.2 above is found present with blood clots. Injury is also found to pulmonary vessels on left aspect as noted in column no. 20. PW 5 Dr. Ramprasad Kulkarni has opined that the death of Santosh is caused due to cardiorespiratory arrest on account of haemorrhagic shock due to

injury to pulmonary vessels by hard, sharp and pointed object."

6. As many as 13 witnesses were examined in the case. PW1-Digambar, PW2-Jaikumar, PW4-Sanjay and PW6-Pandurang Kasar were the eyewitnesses of the incident. All the eyewitnesses have named the accused persons in their depositions. PW6 is the star witness.

7. The defence was taken by the accused that the ocular account of the eyewitnesses and the evidence of medical expert are contradictory so as they relate the injuries sustained by two victims. While considering the evidence of PW5 - Dr. Ramprasad Kulkarni, the trial court rejected the defence taken by the accused and opined that it is absolutely unacceptable that the medical evidence contradicts the ocular account of the injuries.

8. The defence taken by the accused that the eye witnesses were infact not the eyewitness has also been rejected by the trial court mainly relying upon the evidence of PW2 and PW4.

9. Vide order dated 28.02.2005, the trial Court convicted Accused Nos. 1 to 7 and 9 and 12 for the offences punishable under Section 302 IPC read with Section 149 IPC, and also under Sections 143, 144, 147,

148, 506 IPC and sentenced the accused to undergo Life Imprisonment. The plea of alibi raised by Accused No. 6 was also rejected by the Trial Court.

10. The trial court observed that Accused Nos. 8, 10, 11 and 13 appeared to be mere passive witnesses and had joined the assembly as a matter of idle curiosity without intending to entertain the common object of the assembly and, therefore, they were acquitted in the case.

11. Being aggrieved, Accused Nos. 1 to 7 and 9 and 12 approached the High Court. Vide Judgment and Order dated 20.04.2007, the High Court upheld the conviction of Accused Nos.1, 2, 3, 4, 6, 7, 9 and 12. However, Accused No. 5 was acquitted by the High Court giving benefit of doubt.

12. Being aggrieved, the convicted accused are before this Court in the present appeals.

13. We have heard the learned counsel appearing for the parties and have perused the materials on record. In view of the consistent depositions of PW1, PW2, PW4 and PW6, we are of the opinion that merely on the ground that they are not related, their consistent evidence cannot be discarded. They have given the names of the accused persons along with the role attributed to them. The

defence taken by the appellants that PW6 is an independent witness and has not named the accused persons cannot be appreciated. It is evident from his deposition that the accused were carrying sharp weapons like Gupti, Chopper and Knife and had inflicted the injuries on the body of the victims. We have gone through the entire evidence of PW6 and we find that in examination-in-chief at Paragraph 1, all the accused persons were present at the spot and had participated in the gruesome murder of the deceased. Thereafter, they ran away from the spot.

14. The only submission on behalf of the appellants that in the cross-examination, PW6 made a different statement about the presence of the accused at the time of incident and that he has not assigned any overt act to any of the accused persons, that cannot be faulted with the statements of PW1, PW2 and PW4 and no dent has been caused in the versions of PW1, PW2 and PW4 by the deposition of PW6, rather it fully supports their evidences and has rightly been relied upon by the courts below.

15. The High Court has observed that of course, there were slight variations in the testimonies of PW1, PW2 and PW4, but a few stray contradictory statements do not affect the credibility of a witness cannot be made the foundation for discarding their evidence. Similarly, minor variations on the peripheral aspects of the

prosecution case would not be a touch-stone for rejecting the testimony of the eye-witnesses. The presence of the eye-witnesses cannot be doubted nor can any motive be attributed to them for falsely implicating the accused.

16. The defence taken by the appellants that at the time of incident, there was complete dark and there was absence of light on the spot and, therefore, it was not possible for the witnesses to identify the accused, we find no force in the aforesaid submissions. Even the spot panchnama records that there was an electric pole with tube light affixed at the spot.

17. It is also argued with respect to FIR that there was a difference of time in lodging the same. The trial court has held that the FIR was not ante-dated and ante-timed.

18. As regards Accused No. 6 - Sunil Vishnupant Sarode, a specific defence of plea of alibi was raised before the trial court by stating that the accused was not present at the time of occurrence of the crime. But the same was denied by the trial court as well as by the High Court. Though, vide Judgment dated 16.10.2008 in Criminal Appeal No. 1620 of 2008, he has been acquitted by this Court.

19. Accused No. 5 - Rakesh has been given the benefit of doubt by the High Court and has already been acquitted from all the charges leveled against him.

20. Coming to the question of juvenility of Accused No. 9 - Nitin @ Nitesh Rajendra Sarode raised in CrI.M.P.No. 40055 of 2018 in CrI.A.Nos. 1942-1943 of 2009. It is submitted that after the insertion of Section 7A to the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006, the High Court issued direction to all the Sessions Courts to hold an inquiry under Section 7A and pass appropriate orders in accordance with law. An application was filed by Accused No.9 - Nitin @Nitesh Rajendra Sarode claiming juvenility since his Date of Birth was 12.12.1980 and he was below the age of 18 years at the time of occurrence of the crime. A plea is also taken that his name is Nitesh, whereas the name of the accused mentioned in the examination-in-chief of PW1 is Nitin and not Nitesh, though considering the affidavit of his mother, it is stated that Nitin and Nitesh are one and same person. However, we are not satisfied that he was a juvenile as on the date of the incident. Apart from that, he has not taken this plea either before the trial court or before the High Court and hence, we have to be cautious in our approach. Be that as it may, on merits, we are not satisfied that he was a juvenile as on the date of offence. The application is hereby rejected.

21. Hence, the conviction and sentence of the accused persons is hereby maintained. Since the accused persons are on bail vide this Court's Order dated 04.05.2009, their bail bonds are cancelled and they are directed to surrender before the trial court within four weeks to serve out the remaining sentence. In case they do not surrender within the stipulated time, the jurisdictional police shall arrest the accused and shall produce them before the trial court to serve out the remaining sentence.

22. With the aforesaid directions, the appeals are dismissed.

.....J.
[ARUN MISHRA]

.....J.
[NAVIN SINHA]

New Delhi;
March 14, 2019.

ITEM NO.101

COURT NO.4

SECTION II-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s). 1942-1943/2009

SANDEEP @ KHANDU SUDHAKAR. SARODE & ANR.

Appellant(s)

VERSUS

THE STATE OF MAHARASHTRA
(IA 40055/2018)

Respondent(s)

WITH

Cr1.A. No. 465/2010 (II-A)
(FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS ON IA
111142/2018)

Cr1.A. No. 1944-1945/2009 (II-A)

Date : 14-03-2019 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ARUN MISHRA
HON'BLE MR. JUSTICE NAVIN SINHA

For Appellant(s)

Mr. R. Basant, Sr. Adv.
Mr. Sudhanshu S. Choudhari, AOR
Mr. Yogesh S. Kolte, Adv.
Ms. Surabhi Guleria, Adv.
Ms. Nandini Singla, Adv.

Mr. Mahabir Singh, Sr. Adv.
Mr. Shashibhushan P. Adgaonkar, AOR

For Respondent(s)

Ms. Deepa M. Kulkarni, Adv.
Mr. Nishant Ramakantrao Katneshwarkar, AOR

UPON hearing the counsel the Court made the following
O R D E R

The appeals are dismissed in terms of the signed order.

Pending interlocutory application(s), if any, is/are disposed
of.

(JAYANT KUMAR ARORA)
COURT MASTER

(JAGDISH CHANDER)
BRANCH OFFICER

(Signed order is placed on the file)