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Court : Mumbai Aurangabad

Decided On : Aug-19-2016

Judge : S.S. Shinde &Amp; Sangitrao S. Patil

Appeal No. : Criminal Appeal No. 211 of 2013

Appellant : Lala

Respondent : The State of Maharashtra

Judgement :

1. This Appeal is filed challenging the judgment and order dated 28th June, 2002 passed by the Additional Sessions Judge, Nandurbar in Sessions Case No.32/2001, whereby the appellant has been convicted for the offence punishable under Section 302 of the Indian Penal Code and sentenced to suffer imprisonment for life.

2. The prosecution case, in a nutshell, is as under:

The informant viz: Rameshchandra Rana, runs a hotel on Dhule-Surat-Highway viz., "Hotel Garden". He himself and his son Raju used to look after the said hotel business. On 3rd May, 2001 at about 12.45 to 13.00 hours, the informant was present in his hotel. At that time, his servant Shaikh Musa informed him that at some distance from the said hotel, one person was beating somebody by means of stone and due to which, the said another person was seriously injured. Thereupon, the informant, Shaikh Musa, another servant Sanju rushed towards

western side of the said Hotel. At that time, they saw that one person was beating another, by means of stone, near the land of Dharmesh Agrawal. When they tried to catch hold of the said person, he started fleeing away. They chased him and caught hold of him near the land of one Pandit. Meanwhile, a police Jeep came and the police took the said person in their custody. The said person disclosed his name as Lala Hodlya Gavit (i.e. the present appellant). Thereafter, the informant along with other persons, went to the spot where the injured person was lying. He had sustained bleeding injuries on his head and face. The informant identified him as Kantilal Jadhao, who was serving in his (informant's) hotel. Thereafter, the informant lodged F.I.R. in the Police Station of Navapur in respect of the above incident.

3. On the basis of the report lodged by the informant Crime No.43 of 2001 came to be registered with Police Station, Navapur under Section 302 of the I.P.C. Police Inspector Mr.Sonawane investigated the said crime. He arrested the appellant vide arrest panchanama (Exh.16). He conducted the spot panchanama (Exh.17). He sent the dead body to the Rural Hospital, Navapur for postmortem. He seized samples of plain earth and blood mixed earth, blood stained stones, blood stained clothes, handkerchief, chappals of the deceased Kantilal from the spot. He recoded statements of the witnesses. The Medical Officer, who conducted postmortem, found multiple injuries as the body of the deceased Kantilal. He opined that Kantilal died due to brain injury. He opined that the injuries sustained by the deceased Kantilal were possible by stones seized by the Investigating Officer. The Investigating Officer sent a letter to the Tahsildar, requesting him to prepare the spot map. Accordingly, the Naib Tahsildar prepared the map of the spot of the incident. The Investigating Officer referred the seized property to Chemical Analyser for analysis. After completion of the investigation, the Investigating Officer submitted chargesheet against the appellant in the Court of the Judicial Magistrate, First Class, Navapur. As the offence under Section 302 of the Indian Penal Code being exclusively triable by the Sessions Court, the case came to be committed to the Court of Session.

4. The prosecution examined as many as six witnesses. It has been proved beyond reasonable doubt that the death of Kantilal Jadhao was homicidal. Dr.

Vishwas Rulaji Gavit was examined by the prosecution. In his deposition, he stated that the death has been caused due to brain injuries. During his examination, he noticed as many as six antemortem injuries as mentioned in clause No.17 of the P.M. Report. The age of the said injuries has been stated to be within 24 hours. He also expressed that the said injuries were caused by hard and rough object. He also noticed corresponding internal injuries, which are mentioned in column no.18 of the said P.M. Report. Accordingly, he expressed his opinion that the antemortem injuries and internal injuries mentioned in the P.M. Report might be possible due to the seized stones (Art.7), which were shown to him. During the cross-examination, he specifically denied that the injuries mentioned in column no.17 of the P.M. Report might be possible due to dash of vehicle. Thus, the prosecution has proved beyond reasonable doubt that the death of Kantilal Jadhao was homicidal.

5. There are three eye witnesses to the incident. Shaikh Musa (PW-2) states that previously he was serving in "Hotel Garden". The informant Rameshseth is the proprietor of it. He states that the incident took place on 3rd May, 2001 at about 1.00 to 1.30 p.m. He saw that one person was beating Kantilal and upon noticing it, he disclosed the said fact to the informant. Then he himself, the informant and Sanju (PW-3) rushed towards the spot of the incident. They saw that the accused was beating Kantilal by means of stones. They caught hold the accused. Thereafter, the Police arrived at the scene. During his cross-examination the presence of these witnesses at the time of the incident has not been challenged by the defence.

6. The evidence of other two witnesses namely Shaikh Musa (PW-2) and Sanju (PW-3) corroborates with the evidence of the informant, who lodged the report immediately on the same day. As already observed, the police arrived at the scene since the incident had taken place nearby Dhule-Surat Highway. Therefore, if the entire ocular evidence coupled with the medical evidence, which has remained unshattered, is taken into consideration, an inevitable conclusion would be that the appellant caused serious bleeding injuries to the deceased Kantilal by means of stones leading to his death.

7. The argument of the learned counsel appearing for the appellant that the charge as has been framed by the learned Trial Judge is vague in as much as it does not contain the spot of the incident. Therefore, the accused is entitled to get acquitted. We are not inclined to accept this contention. The appellant did not ever raise any objection before the Trial Court on the ground of vague charge and that he was going to suffer prejudice because of such charge. Nothing is brought on record by the defence side as to what prejudice has been caused because of framing such a charge. The accused has defended himself effectively despite this defect in the charge. In fact, his defence is that of total denial. In the circumstances, in view of the provisions of Section 465 of the Code of Criminal Procedure, in the absence of anything to show that there was failure of justice because of vague charge, the findings recorded by the learned Trial Judge holding the appellant guilty, cannot be reversed.

8. The contention of the learned counsel appearing for the appellant that there are contradictions in the statements of the eye witnesses deserves no consideration. Upon considering the evidence of the three eye witnesses, which is quite consistent on all material particulars. Except some variation in the distance from Hotel Garden to the place of the incident, we do not find any material discrepancy in their evidence. Their presence at the relevant time, identification of the deceased by them and their evidence before the Court that not only they saw the incident, but they caught hold of the appellant and thereafter police arrived at the scene, has not been shattered. The evidence of the three eye witnesses also gets corroboration from the medical evidence of Dr.Vishwas Gavit (P.W.5).

9. In that view of the matter, in our considered view, the judgment and order passed by the trial Court needs no interference. The findings recorded by the trial Court are in consonance with the evidence brought on record by the prosecution. In the circumstances, the Appeal stands dismissed.

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