

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO.660 OF 1995**

**VIJAY JAYANT TEJALE**

**)...APPELLANT**

**V/s.**

**THE STATE OF MAHARASHTRA**

**)...RESPONDENT**

Ms.Ameeta Kuttikrishnan, Advocate Appointed as Amicus Curiae,  
for the Appellant.

Mrs.S.Gajare-Dhumal, APP for the Respondent - State.

**CORAM : ABHAY M. THIPSAY, J.**

**DATE : 10<sup>th</sup> AUGUST 2015.**

**ORAL JUDGMENT :**

1           This appeal is directed against the judgment and order dated 13<sup>th</sup> November 1995 delivered by the Additional Sessions Judge, Nasik, in Sessions Case No.105 of 1995, convicting the appellant, who was the accused no.1 in the said case, of an offence punishable under Section 307 of the Indian Penal Code (IPC) and sentencing him to suffer Rigorous Imprisonment for 3 years and to

pay a fine of Rs.5,000/-, in default, to suffer Rigorous Imprisonment for 6 months. There were four others, who were also prosecuted along with the appellant. The appellant and the said four others were accused of having committed the offences punishable under Section 147 of the IPC, Section 148 of the IPC and Section 307 of the IPC read with Section 149 of the IPC, as also, an offence punishable under Section 135 of the Bombay Police Act. The learned Additional Sessions Judge found the other four not guilty and acquitted them of all the offences. Even the appellant was acquitted of the other offences except the one punishable under Section 307 of the IPC, for which he was convicted and sentenced, as aforesaid.

2           As the counsel for the appellant continuously remained absent whenever the appeal was listed on board for final hearing, it was decided to hear the appeal after going through the relevant record and proceedings and after hearing the learned APP. Ms. Ameeta Kuttikrishnan was appointed as an *amicus curiae* to assist the court.

3           The learned *amicus curiae* has taken me through the evidence adduced during the trial and the impugned judgment. The learned *amicus curiae* has prepared a brief synopsis giving the details of the witnesses, their evidence, and has made her comments on the evidence that was adduced before the trial court.

4           The prosecution story, as put forth before the trial court, in brief, be stated thus :

          The appellant and the other accused wanted to celebrate *Rang Panchami*, and were, therefore, collecting contributions from the shopkeepers about 2 to 3 days prior to the incident. The appellant had approached Rajesh Nagare – First Informant and the victim – asking him to contribute towards the *Rang Panchami* celebrations, but, Nagare had refused to pay any contribution. Again, on 21<sup>st</sup> March 1995, the appellant and others had gone to the shop of Nagare and had again demanded the contribution, but Nagare had refused to pay this time also. On

22<sup>nd</sup> March 1995, the appellant along with the other accused went to the shop of Nagare, at about 11.00 a.m., and there the alleged incident took place. Since Nagare refused to pay the amount, the appellant threatened to kill him and took out a knife from the pocket of his pant. Out of fear, Nagare jumped from the counter of the shop and started running away. The appellant chased him. Nagare, while running, fell down on the ground near the egg shop of one Anil Ramchandra Tamboli (PW5). The appellant, at that place, stabbed Nagare with the knife on Nagare's chest. Nagare caught hold of the knife and started crying for help. The appellant pulled out the knife from the grip of Nagare and ran away. Nagare was sent to the hospital. The First Information Report (FIR) was registered on the basis of what is stated to the police. The statement of Nagare was also recorded by an Executive Magistrate. On completion of investigation, the appellant and the others were charge-sheeted and prosecuted, as aforesaid.

5            I have gone through the evidence of Nagare. I do not find that his testimony suffers from any weaknesses. The version

in the examination-in-chief has not been shaken in any manner in the cross-examination of Nagare. The version of Nagare is also consistent with the FIR – Exhibit 33.

6           The evidence of Nagare is corroborated by the evidence of Anil Tamboli (PW5) who runs an egg center, just in front of the shop of Nagare. Tamboli claims to have seen the actual assault and has narrated the incident. The evidence of Tamboli is in conformity with the evidence of Nagare.

7           Moreover, the evidence of Nagare and Tamboli is corroborated by the evidence of Dr.Subhash Siddhapure (PW7). His evidence shows that while he was on duty at the General hospital, Nasik District, as a Medical Officer, he examined Nagare, who had been referred to him by the police. He noticed the following injuries on the body of Nagare :

“i) Stab wound on left anterior side of chest  
from II to V rib 5 cm. long x 1 cm. wide x skin  
deep, it was a bleeding injury.

X-ray was taken but nothing abnormal was detected.

ii) Stab wound on left axilla x 1 cm. long x 1 cm. wide x skin deep, it was a bleeding injury.

iii) Contusion on left shoulder circular in shape with 3 cm. diameter,

iv) Laceration on greater toe rt. side.”

According to him, the injuries had been caused within 24 hours, and that, the injuries nos.1 and 2 were caused by a sharp cutting object like knife. The knife (Article 4) which was said to be the weapon of assault and which was allegedly recovered in the course of investigation, pursuant to the information disclosed by the appellant, was shown to Dr.Subhash Siddhapure, and he said that the injuries at serial nos.1 and 2, as were sustained by Nagare, could be caused by the said knife. Nagare was hospitalized for a period of three days. In the cross-examination, when specifically questioned in that regard, he said that the injuries nos.1 and 2, as sustained by Nagare, could be termed as

“grievous” and the other injuries were simple. The possibility of the injury no.1 being a self inflicted injury, was ruled out by this witness.

8           The prosecution had adduced other evidence which corroborate the version of Nagare. The first witness Nitin Pawar (PW1) is a panch in respect of the seizure of the clothes of Nagare. The second witness Yogesh Joshi (PW2) is also a panch, who acted as such, in respect of the spot panchnama. The third witness Balu Bodke (PW3) is a panch in respect of the arrest panchnama of the appellant.

9           The evidence of Girish Lolge (PW6) - a panch, and Sanjay Sangle (PW9) – the Investigating Officer, shows that pursuant to the information given by Nagare, while he was in custody, a blood stained T-Shirt and a knife came to be recovered from the shrubs beneath the Godavari river bridge. This is the same knife, which was produced before the court, marked as 'Article 4' and was shown to Dr.Subhash Siddhapure during his

evidence. The eighth witness Uttam Thakarey (PW8) is the one, who had reached the scene of the offence, immediately after the incident, and had seen Nagare falling on the ground with a bleeding injury, and some persons running away from the said place. He had chased those persons and caught one of them, viz., Milind Pagare, who was accused no.3 in the said case. The evidence of this witness is relevant in the context of the happening of the incident, its place and the time when it took place.

10            In his evidence, Sanjay Sangle (PW9) has given the details of the investigation.

11            I have gone through the impugned judgment. The learned Additional Sessions Judge has come to the conclusion that the evidence of Rajesh Nagare (PW4), Anil Tamboli (PW5), Girish Lolge (PW6), and that of Sanjay Sangle (PW9) was reliable. On an independent re-appraisal of the evidence of these witnesses, I also come to the same conclusion. In my opinion, the appreciation of evidence, as done by the learned Additional

Sessions Judge, suffers from no infirmities or error. The conclusion arrived at by him, that the appellant inflicted blows on Nagare with a knife causing grievous hurt to him, appears to be proper and legal.

12           The learned *amicus curiae*, however, brought to my notice that the incident had taken place about 20 years back. She submitted that the appellant was, at the material time, only 20 years old. She also submitted that, in the circumstances, the sentence of 3 years, as imposed by the Additional Sessions Judge, would be rather harsh.

13           I have given my thoughtful consideration to this submission. The evidence does indicate that the appellant had threatened to kill Nagare before assaulting him. However, there may be some scope for doubt, inspite of this assertion of Nagare, that the appellant assaulted him with such intention and / or knowledge, as would be required for constituting the offence of murder, had Nagare died because of the injuries sustained by him

on account of the said assault. However, in the view that I am taking, it is not necessary to go deeper and examine this aspect of the matter. It is because, the appellant, at any rate, plainly appears to be guilty of an offence punishable under Section 326 of the IPC. The appellant was, apparently, forcing the shopkeepers to pay contribution for the *Rang Panchami* festival, which was apparently a method of extorting money from the shopkeepers. The appellant, apparently had gone to the shop of Nagare with full preparation, after Nagare had earlier refused to pay the contribution. Under these circumstances, it appears to me, that the learned Additional Sessions Judge has already taken a lenient view of the matter, as regard the sentence.

14           It is true that there has been a time gap of about 20 years from the date of the incident and today, and that, in the meantime, the position of the appellant in life may have been considerably changed. However, when the appellant plainly appears to be guilty of a serious offence and the sentence imposed upon him already appears to be lenient, I do not think it proper to

consider reduction of the sentence imposed upon the appellant,  
just because of the time gap.

15           Appeal is dismissed.

**(ABHAY M. THIPSAY, J.)**