

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.54 OF 2015
WITH
CRIMINAL APPLICATION NO.362 OF 2015
IN
CRIMINAL APPEAL NO.54 OF 2015

Prashant Mahabal Shetty,
Age about 35 yrs, Occupation service,
Residing at Lovely House, IInd, Room No.35,
Shanti Nagar, Wagle Estate, District – Thane.
[Presently lodged in Nashik Central Jail] ..Appellant

Versus

The State of Maharashtra
(Through Vikhroli Police Station
C.R.No.70/2012) (S.C. No.562/2012] ..Respondent

....
Mr. G.T. Kanchanpurkar, Advocate for the Appellant.
Mrs. Anamika Malhotra, APP, for the State.
....

CORAM : A. R. JOSHI, J.

DATE : 4th SEPTEMBER, 2015

JUDGMENT:-

1. Heard learned Counsel for the appellant. Also heard learned APP for the State.

2. This is an appeal preferred by the convicted accused challenging the judgment and order of conviction dated 17.12.2014 passed by the Additional Sessions Judge, Greater Bombay in S.C. No.562 of 2012.

3. The present appellant is convicted for the offence punishable under Section 326 of IPC and sentenced to suffer RI for two years and to pay fine of Rs.10,000/-, in default, to suffer SI for a period of two months.

4. The case of prosecution in nutshell is that in the afternoon of 24th March, 2012 the complainant (PW-1) and present appellant/accused, his nephew, were at the house of the complainant. There was some discussion over the things to be done in that afternoon. All of a sudden the present appellant/accused came from the backside of the complainant and stabbed him by means of a knife. That time the complainant was removing some cheque from the cupboard. On such unexpected assault by his close relative, the complainant became startle and enquired as to why the accused was assaulting him. On this, the appellant/accused replied that the complainant was not giving him money. A kitchen knife was

used for the assault on the complainant. The assault was on the abdomen and chest and also on neck. Various injuries were caused which were profusely bleeding. The complainant raised shouts for help and on this the neighbours gathered including PW-3 and PW-7. They noticed that the door of the flat was bolted from outside by somebody. They opened the door and entered and saw the complainant lying in a pool of blood with severe injuries on his chest and abdomen and on neck and the appellant/accused was sitting on the bed. His clothes were also stained with blood. Thereafter the police were called but prior to that the injured complainant was taken to Godrej Hospital and was initially treated after examination by PW-4 Dr. Prem Agrawal. Thereafter the complainant was referred to the expert doctor PW-5 Dr. Jiten Choudhary. Said PW-5 was a Surgeon attached to Godrej Memorial Hospital, Vikhroli. There were four stab wounds noticed by said expert Surgeon (PW-5) and also noticed one CLW. The injuries noticed by PW-5 are as under :

- “(i) 15X4 cm CLW on right side of neck.
- (ii) 4 stabbed wounds of approximately 1 X 2 cm visible size on left supra clavicular left chest and 2 on left upper abdomen.
- (iii) patient had moderate left haemothorax and gastric perforation. The injuries noticed were life threatening injuries and may have resulted in

death of the patient. All the injuries were of grievous nature.”

5. It is also case of the prosecution that after the police personnel arrived at the flat of the complainant one Police Nayak (PW-6) was apprised of the situation by the neighbours and then said Police Nayak took charge of the appellant/accused who was then detained by the neighbours. During the investigation, statements of various witnesses were recorded including statement of PW-3 a neighbouring woman and PW-7 another neighbour. Initially FIR was registered as Exhibit-16 on the complaint of PW-1 injured. Said FIR was taken on the complaint given by the injured in the hospital while he was under treatment. During investigation, spot panchnama was conducted and one kitchen knife stained with blood was recovered. The clothes of the victim and also the clothes of the accused were seized and sent for chemical analysis. The C.A. Report (Exhibits-50 and 51) specifically show the presence of blood on the clothes of the appellant/accused and also the blood of “O” group on the clothes of the victim. Even the knife was also having blood stains and all said blood was of human origin. On completion of investigation, charge-

sheet was filed and the matter was committed to the Court of Sessions and ended in conviction as mentioned above.

6. During the trial total ten witnesses were examined. However, the important substantive evidence is that of PW-1 the complainant, PW-3 a neighbouring woman and PW-7 another neighbour. Also the important evidence is that of two doctors PW-4 and PW-5.

7. Though much is argued on behalf of the appellant/accused as to there was no possibility for the neighbouring woman (PW-3) to witness the actual incident of assault through the window to the flat of the complainant, this aspect was dealt in detail by the trial Court and reasoning has been given as to though there is some discrepancy considering the contents of the scene of offence panchnama showing that there was no window to the said flat, it was ascertained by the trial Court that in fact the presence of the assailant/accused in the said flat during the incident has not been disputed and the presence of the appellant with blood stained clothes is actually fortified by the substantive evidence of PW-6 Police Nayak so also the substantive evidence of PW-3 and PW-7 the neighbours.

In fact, the defence of the appellant/accused is that of false implication out of some money transactions or property transactions between them. The relation between the parties is accepted. As such, it is an admitted position that the present appellant was found in the flat of the complainant when the neighbours arrived there. Even on preponderance of probabilities there is no any explanation coming from the appellant/accused as to how and in what manner the injuries were sustained by the complainant if allegedly he is not the assailant and apart from him and the complainant nobody else was in the room.

8. Though during the arguments initially it is argued that it is not a case of assault by the appellant, at the end of the arguments it is alternatively submitted that considering the circumstances of the case and considering that the appellant had already undergone imprisonment of about one year and five months, the substantive imprisonment of two years awarded by the trial Court may be brought down to the imprisonment already undergone.

9. Considering this last argument, in the opinion of this

Court, this benefit cannot be given in favour of the appellant mainly considering the injuries and specifically on which part of the body the injuries were inflicted on the complainant. At the cost of repetition it must be mentioned that there were four injuries on the abdomen and chest i.e. two injuries near umbilical-cord and two injuries near the left side nipple. Definitely the injuries were of severe nature and could have caused death of the complainant. Though initially charge was under Section 307 of IPC, at the end of the trial this charge was brought down to Section 326 of IPC and detailed explanation has been given by the trial Court in para-18 of the impugned judgment and order as to not accepting that it was case punishable under Section 307 of IPC. The State has also not preferred any appeal either for enhancement of the punishment or for that matter challenging the acquittal of the appellant for the offence punishable under Section 307 of IPC. Considering this scenario and considering the substantive evidence of main prosecution witnesses PW-1, PW-3, PW-6 and PW-7 coupled with the medical evidence of doctors PW-4 and PW-5, in the opinion of this Court there is nothing to interfere with the impugned judgment and order. So also even the last argument

cannot be accepted. In the result, present appeal is dismissed and accordingly disposed. Application for bail also stands disposed of.

(A. R. JOSHI, J.)

Deshmane (PS)