

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 776 OF 2012

Kishore Satyawar Jagtap
Age : 38 years, Occ. Nil
R/at 582, Thomas Colony,
Dehuroad, Pune
(At present lodged in Yerawada
Central Jail)

.. Appellant

v/s.

1. The State of Maharashtra
(at the instance of Sr. P.I. Bundgarden
Police Station, Dist. Pune)

2. Nilesh Sakharam Gaikwad
Age : 32 yrs. Occ. Rikshaw Driver
R/at 11, Tadiwala Road, Bhaji Market
Pune

.. Respondents

Mr. Prashant M. Patil for the appellant
Mr. K.V. Saste, APP for the respondent State

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 13th JANUARY, 2015.**

(ORAL JUDGMENT) :-

1. This appeal is directed against the judgment and order dated 25.05.2012 passed by learned Sessions Judge, Pune in Sessions Case No.681 of 2008 for the offence punishable under Section 307 of the

IPC and has been sentenced to undergo rigorous imprisonment for five years and to pay fine of Rs.5,000/-, in default to undergo further RI for three months. Out of the fine amount of Rs.5,000/-, an amount of Rs.4,000/- was ordered to be awarded to the injured lady Madhuri Gaikwad as compensation u/s 357 of the Cr.P.C. The period undergone the sentence was ordered to be set off.

2. The case of the prosecution in brief is as under. PW-1 Nilesh Gaikwad, husband of the injured had lodged the FIR dated 08.05.2008 at Exh.21, wherein he had alleged that the accused had stabbed his wife PW-2 Madhuri by means of a knife and had caused serious injuries to her. On the basis of the said FIR, PW-6 Mahendra Pardeshi, P.I. attached to the Bund Garden Police Station, registered crime against the accused under Section 307 of the IPC. He has conducted the scene of offence panchanama at Exh.27 in presence of PW-3 Khandu Shitole. He has recorded the statement of the injured PW-2 Madhuri and attached the clothes worn by her on the date of incident, under panchanama at Exh.28. He arrested the accused on 10.05.2008 under arrest panchanama at Exh.44. It is the case of

the prosecution that while the accused was in custody, he had made a disclosure statement at Exh.28 and in pursuance of the said statement a knife was recovered and seized under memorandum panchanama at Exh.48. The clothes worn by the accused on the date of the incident were also seized under seizure panchanama at Exh.49. The clothes of the accused as well as the clothes of the victim and the knife were forwarded to chemical analyser for examination. On receipt of the injury certificate at Exh.37, he filed charge-sheet against the accused before the J.M.F.C. at Pune.

3. On committal of the case to the Sessions Court, charge under Section 307 of the IPC was framed against the accused. The accused pleaded not guilty and claimed to be tried. The prosecution in support of its case, examined 6 witnesses. The statement of the accused was recorded under Section 313 of the Cr.PC. The accused denied having committed any offence and stated in his statement under Section 313 of the Cr.PC. that he was helping the injured PW-2 Madhuri and that PW-1 husband of the injured suspected that he was having love affair with her wife. The accused had stated that the

injured had informed him that her husband was harassing her and hence he had stopped helping the injured. It is further stated that the injured had asked him for monetary help. However, since he has refused to help her, she has threatened to sell his house and also implicate him in a false case. The defence of the accused is that, he has been falsely implicated since he has stopped meeting the victim and stopped helping her financially.

4. Upon considering the evidence on record and upon analyzing the evidence of the prosecution and more particularly relying upon the evidence of the injured and the medical evidence, the learned trial Judge held that the prosecution has established beyond reasonable doubt that the accused had inflicted injuries on PW-2 Madhuri. The learned trial Judge further held that the medical evidence reveals that the injuries could have been fatal, if the injured had not been treated in time. Considering the medical evidence as well as the nature of the injuries, the learned trial Judge held that the accused was guilty of offence punishable under Section 307 of the IPC and considering the age of the accused and also considering the

fact that he had a minor child, the learned Magistrate took a lenient view and sentenced the accused to undergo rigorous imprisonment for 5 years and to pay fine of Rs.5,000/-. Aggrieved by this conviction and sentence the accused had preferred the present appeal.

5. Mr. Patil, learned Counsel for the appellant, at the outset, has submitted that he does not wish to challenge the conviction of the accused and that he has restricted his arguments that the sentence may be reduced. He has submitted that the accused is a young person having a minor child and that he was only earning member of the family and he is in the custody for more than 2 ½ years. He has submitted that considering the nature of the injuries sustained by the victim and also relationship between the accused and the victim, lenient view may be taken and the sentence be reduced.

6. Mr. Saste, learned APP for the respondent State has submitted that the evidence of PW-2 proves beyond reasonable doubt that the accused had given several blows of knife on her abdomen. It is further argued that the medical evidence proves that the injuries on

the person of the accused, were of serious nature. It is submitted that the learned trial Judge has already taken a lenient view and no further leniency needs to be shown toward the accused.

7. I have perused the record and considered the arguments advanced by the learned Counsel for the respective parties. Since the learned Counsel for the accused has restricted his arguments only to the point of sentence imposed upon the accused, the only question which would fall for determination is to whether the appellant has made out a case for reducing the sentence. In the case of ***Shimbhu and Anr. Vs. State of Haryana, AIR 2014, SC 739***, the Apex Court has held that :-

“9. The crucial stage in every criminal proceeding is the stage of sentencing. It is the most complex and difficult stage in the judicial process. The Indian legal system confers ample discretion on the judges to levy the appropriate sentence. However, this discretion is not unfettered in nature rather various factors like the nature, gravity, the manner and the circumstances of the commission of the offence, the personality

of the accused, character, aggravating as well as mitigating circumstances, antecedents etc., cumulatively constitute as the yardsticks for the judges to decide on the sentence to be imposed. Indisputedly, the sentencing Courts shall consider all relevant facts and circumstances bearing on the question of sentence and impose a sentence commensurate with the crime committed.”

8. It is not in dispute that the accused herein is a 38 years old man having a minor girl child. Record does not indicate that the accused has criminal antecedents and that he is otherwise a threat to the society. The evidence on record also does not indicate that the accused had any enmity towards the injured. On the contrary, the evidence of the PW-2 to indicate that the accused was known to her since from college days. The accused had proposed to her but she had refused his proposal and had married PW-1. PW-2 has stated that she had met the accused in the year 2004 and had requested the accused to help her monitorily. Her evidence indicates that the accused used to help her monitorily. She has also admitted that the Television, which was purchased by her is also in the name of the

accused and that the installment were paid from the account of the accused.

9. The evidence of PW-2 reveals that the accused was working in Citi Finance. The accused had told her to recommend some customers, who were in need of loan and had assured to pay her the commission. The evidence of PW-2 reveals that the incident occurred over the dispute of payment of commission. The incident was, therefore, not premeditated but had occurred on the spur of moment, when PW-2 had demanded commission of Rs.15,000/-.

10. The aforesaid mitigating circumstances, in my considered view, warrants a lenient view. Hence, in my considered view the ends of justice would be met if the sentence is reduced to 4 years, subject to payment of compensation of Rs.25,000/- to the victim.

11. Under the circumstances and in view of the discussion supra, I pass the following order :-

ORDER

(i) The appeal is partly allowed, while maintaining the conviction under Section 307 of the IPC, the sentence of 5 years rigorous imprisonment is set aside and the appellant is sentenced to undergo rigorous imprisonment for Four years.

(ii) In addition to the fine imposed by the trial Court, the appellant is directed to pay Rs.25,000/- to the victim, failing which the appellant shall undergo further rigorous imprisonment for one year.

(ANUJA PRABHUDESSAI, J.)