

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

CRIMINAL REVISION APPLICATION NO. 71 OF 2001

Pratapsing s/o Ratansing Sikkalka,
Age: 40 years, Occ: Labour,
R/o. New Bridge, Nyayanagar,
Cidco, Nanded.

...Applicant

versus

The State of Maharashtra

...Respondent

.....
Mr. A.B. Gaikwad, Advocate for applicant
Mr. R.V. Dasalkar, A.P.P. for respondent
.....

CORAM : N.W. SAMBRE, J.

DATE : 11th APRIL, 2016

ORAL JUDGMENT :

This revision application is against the order passed by 4th Assistant Sessions Judge, Nanded on 20/03/1993, convicting the applicant under Section 235(2) of the Code of Criminal Procedure for the offence punishable under Section 307 of the Indian Penal Code, sentencing him to suffer rigorous imprisonment for five years and payment of fine of Rs.500/-, in default to suffer rigorous imprisonment for six months. The appeal of the present applicant before the Sessions Judge, Nanded, has resulted into modification of the sentence and present applicant was made to suffer rigorous

imprisonment for two years alongwith fine as ordered by learned Assistant Sessions Judge.

2. Heard Mr. A.B. Gaikwad, learned Counsel for the applicant and Mr. R.V. Dasalkar, learned A.P.P. for the State.

3. Learned Counsel for the applicant, while trying to make out a case for showing indulgence, would urge that there is hardly any material on record to implicate the applicant in the crime in question. He would submit that the prosecution story, as narrated against the present applicant is, on 01/04/1991 Manjeetsing, complainant alongwith Papindersing, Umesh and Balaji had gone to Navjeevan Permit Room situated at ground floor of Nirose Lodge at old Mondha, Nanded and consumed liquor and eatables of Rs. 175/-. As they were short of amount to clear the bill, they sought credit, which was refused by the Manager resulting into quarrel between them and manager. The present applicant, who was posted as Watchman, tried to intervene in the matter, however, since the complainant and other persons were under the influence, they abused the applicant-accused, resulting into the applicant attacked the victim Papindersingh by the dagger, resulting into causing of injury in the stomach. It is claimed by prosecution that the part of intestine has protruded through the stomach because of injury in

question and as such, the present applicant was charge sheeted for the offence punishable under Section 307 of the Indian Penal Code.

4. While trying to make out a case for grant of acquittal, learned Counsel for the applicant-accused submits that the conviction of the applicant cannot be sustained, in view of the fact that neither blood stains could be noticed on the shirt of victim Papindersing nor any blood stains could be found on the dagger seized from the custody of the applicant. He would then took me through the entire evidence and submits that there is hardly any material on record to connect the present applicant to the crime in question.

5. Learned A.P.P. supports the findings recorded by both the Courts below and sought dismissal of the present revision.

6. Upon perusal of the record, it depicts that the prosecution has recorded the evidence of PW-3 Manjiesingh, who is the complainant at Exhibit-16, PW-4 Papindersingh at Exhibit-18, and PW-5 Umesh at Exhibit-19, so as to prove the alleged incident. Apart from above, the Medical evidence tendered by PW-1 Dr. Dinkar Kotalwar at Exhibit-11, PW-2 Kishor Chatiwar, panch witness on the spot panchnama at Exhibit-13, PW-6 Pradip, panch on panchnama of

seizure of blood stains clothes of victimat Exhibit-20, PW-7 Vilas, panch witness for recovery of dagger from the accused at Exhibit-22 and PW-8 Manchak Khomne, P.S.I., the Investigating Officer at Exhibit-25. The prosecution has established that the complainant Manjeetsing alongwith other companions have consumed liquor and eatable, however, being short of amount for settling the bill, Papindersingh offered his wrist watch towards security of balance amount, manager of permit room declined the same and was insisting upon the payment. It is then noted that present applicant intervened and asked the complainant to pay money, however difference ensued between Papindersingh and present applicant. Hot words were exchanged between Papindersingh and the accused, resulting into present applicant whipping out dagger and stabbing PW-4 Papindersingh on the stomach. It is then claimed that the said contents corroborates with the F.I.R. Exhibit-17 and the victim, then has identified assailant and dagger Article-1. Though it is claimed by complainant Manjeeetsingh and victim Papindersingh that they have not consumed any liquor, however their conduct of not controlling the accused speaks about their position and as such, their deposition to the extent that they have not consumed liquor does not inspire confidence. It is also noted that there was heavy traffic on the place of incident being part of commercial locality.

7. The evidence of Dr. Kotalwar speaks of stab injury and the fact remains that none of the persons who accompanied the victim tried to nab or chase the accused on the spot.

8. The evidence of PW-1 Dr. Kotalwar if perused, he claims that there was a stab injury on the right iliac region 2"x 1" intestinal loop protruding out. According to him, the injury was grievous one and was caused by sharp edged weapon. He has issued medical certificate Exhibit-12 to that effect.

9. It is then required to be noted that Article-1 dagger is claimed to have been used in the commission of crime in question. The evidence of PW-2 Kishor, panch to the spot panchnama, though supports the same, however, it is to be noted that in the spot panchnama, it is stated that blood stains are found at three places, however such blood stains could not be noticed at Exhibit-14, spot panchnama, which was drawn on the next day.

10. Though shirt of the victim was seized, the same was in torn position from front side. Panchnama Exhibit-21 of the seizure of the said shirt does not speak of any blood stains on the same and also the said shirt was not sent for chemical analysis, so as to find out whether blood stains match with that of blood group of the victim.

Though dagger was shown to have been seized at Exhibit-23, however, no blood stains could be noticed on the same nor the said weapon was sent for chemical analysis.

11. In the above referred background, it could be inferred that in the spot panchnama, no blood stains could be noticed on the spot of incident, shirt of victim Papindersingh, which was seized vide panchnama at Exhibit-21 does not show any blood stains. It is claimed that he was attacked with a dagger and part of his intestine was protruded from stomach towards outside and blood was oozing out of the same and fall on the marble floor.

12. Even if from the above referred evidence discussed, it could be noted that victim Papindersingh suffered injury, however, to infer that the said injury was caused by present applicant, particularly with use of dagger, which does not contain blood stains, absence of any blood stains on the shirt of victim Papindersingh, which was seized and failure of prosecution to establish that the victim Papindersingh suffered injury because of attack by dagger made by the applicant, in my opinion, prompt me to take only conclusion that the case of prosecution for convicting the present applicant for the offence punishable under Section 307 of the Indian Penal Code is not proved beyond reasonable doubt.

13. As such, in my opinion, the present criminal revision application is liable to be allowed. The judgment and conviction delivered by learned Sessions Judge on 13.03.2001 in Criminal Appeal No. 28 of 1993 is hereby set aside. It is declared that the applicant herein is acquitted of the offence punishable under Section 307 of the Indian Penal Code for attempting to commit murder of one Papindersingh. His bail bond stands cancelled. Fine amount be refunded to the applicant, if already paid.

14. The criminal revision application stands allowed in above terms.

[N.W. SAMBRE, J.]