

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 721 OF 1996

Yuvraj Dadarao Kamble,
Age : 20 years, Occ. Service,
R/at 10, Janwadi,
Janta Vasahat, Pune 16.

... Appellant.

Versus

The State of Maharashtra.

... Respondent.

Mr. Ujwal Gandhi, Advocate appointed for Appellant.

Mrs. A.A. Mane, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J

DATE : MARCH 9, 2016

JUDGMENT:

1 None appears for the appellant. None appeared for the appellant. This Court (Coram : R.C. Chavan, J) had issued bailable warrant. The said warrant was recalled on 28/2/2013 since Advocate Mr. Sachin Thombre had appeared for the appellant and requested that the warrant be recalled, subject to the cost of Rs. 1,000/-. On 12/6/2015 none appeared for the appellant. Hence,

this Court (Coram : Abhay M. Thipsay, J) had directed the office to give intimation to the advocate for the appellant requesting him to remain present in the court. Thereafter, the matter was adjourned from time to time. None appeared for the appellant on 12/8/2015, 21/8/2015 and 6/10/2015. Hence, this Court has requested Mr. Ujwal Gandhi to espouse the cause of the appellant. He has graciously accepted the request made by this Court.

2 The appellant herein is convicted for an offence punishable under Section 307 of the Indian Penal Code and sentenced to suffer R.I. for 5 years and to pay fine of Rs. 500/- I.d to suffer R.I. for one year by the 4th Additional Sessions Judge, Pune in Sessions Case No. 398 of 1993 vide Judgment and Order dated 3/12/1996.

3 Such of the facts necessary for the decision of this appeal are as follows:

- (i) Rajendra Dabi was running Ration shop at Arun Kadam Square, Janwadi, Pune. He was also running lottery shop at Deep Bunglow Square, Pune.
- (ii) On 16/4/1993 at about 4 p.m. Rajendra Dabi was in the said ration shop. His parents were also present in the shop. At about 7 p.m. the accused had been to the shop alongwith a boy having canister. The said boy was a minor aged about 10 to 12 years only.
- (iii) Upon enquiry by the accused, the complainant had informed that no kerosene was available in the shop. The accused had attempted to enter into the shop. He had expressed his intention to personally verify as to whether kerosene was available or not. The complainant protested the entry of the accused in the shop.
- (iv) Being aggrieved by the said act, the accused inflicted a blow of sickle on the complainant, which had landed on right fore arm and right side of chest. The complainant sustained bleeding injury and fell down.
- (v) Soon after the incident, the accused had fled from the scene of offence. The parents of the complainant were present in the shop.

The injured was taken to Janwadi Police Station by his parents. The police had issued a requisition to Sassoon Hospital. The injured was taken to Sassoon Hospital. An intimation was sent to Chaturshringi Police Station by the Hospital.

(vi) Upon receipt of information, the police had approached to the injured in the hospital in Ward No. 7 and had recorded his statement. On the basis of his statement, Crime No. 105 of 1993 was registered at Chaturshringi Police Station.

(vii) The accused was arrested on 17/4/1993. He was released on bail by an order dated 5/5/1993.

(viii) After completion of investigation, charge-sheet was filed. Since the charge-sheet was filed for offence punishable under Section 307 of the Indian Penal Code, the case was committed to the Court of Sessions and registered as Sessions Case No. 398 of 1993.

4 The prosecution examined 6 witnesses to bring home the guilt of the accused.

5 P.W. 1 Rajendra Pratapmal Dabi is the injured complainant. He has deposed before the Court that on 16/4/1993 at about 6.30 p.m. one person had come to the shop alongwith a young boy. That P.W. 1 had informed him that kerosene was not available. The accused wanted to verify the same and therefore, attempted to enter into the shop. P.W. 1 objected the entry of the accused. The accused had attempted to hit P.W. 1 with sickle. P.W. 1 tried to ward off the attack and in the said transaction he had sustained injury to his right fore arm and right side of chest and right thumb. He fell on the ground. His parents had taken him Janwadi Police Station and from there to Sassoon Hospital. On the same day, his statement was recorded by the police. According to P.W. 1, he was treated as injured patient for a period of 8 days. In the cross-examination, the witness has admitted that he had no knowledge as to whether the accused was a ration card holder of his ration shop. He had not enquired with the accused as to whether he holds ration card. He was distributing grains to the customer. The accused was at a

distance of 2 or 3 feet from him. The accused appeared to be aggressive.

6 P.W. 1 has admitted that he did not know the accused before 16/4/1993. He did not know the name of the accused even at the time of the incident.

7 It is pertinent to note that P.W. 1 has identified the accused before the Court. No test identification parade was held. It was necessary for the investigating agency to carry out the test identification parade.

8 P.W. 2 Sharad Bhosale who is the panch to the seizure panchanama has been declared hostile by the prosecution.

9 P.W. 3 Pratapmal Dabi happens to be the father of the injured. It is elicited in the cross-examination that the accused is not a ration card holder of his shop before 16/4/1993. He had never been to the

shop for purchasing grains or other articles. It is also elicited that at the time of incident, no other customer was in the shop. P.W. 3 had also requested the accused not to enter into the shop. The accused opened the plank of the counter by one hand pushing by pushing P.W. 1 and entered into the shop. The incident lasted for about 3 minutes. The shop is situated in hutment area. P.W. 3 was convicted and sentenced to imprisonment for two years. He had learnt the name of the accused subsequent to lodging of the report.

10 P.W. 4 Dr. Vishnu Laxman Ughade had treated P.W. 1 in Sassoon Hospital. According to P.W. 1, injured had sustained incised wound over right arm upper third, measuring 3 inch x 1 inch x 1/10 inch and incised wound over chest measuring 1 inch x 1/10 inch x 1/10 inch. He has proved the injury certificate, which is marked at Exh. 9. According to P.W. 4, said injuries were sufficient in the ordinary course of nature to cause death.

11 P.W. 5 Subhash Kapre was PSI attached to Chatushringi Police Station. He had arrested the accused on 17/4/1993 in Crime No. 105 of 1993.

12 P.W. 6 Bapurao Vithoba Bhat is the investigating officer. He has deposed before the Court that the injured Rajendra Dabe had informed that he was assaulted by one unknown person. The injured was sent to the hospital with requisition letter. He had conducted the investigation in accordance with law. There was a recovery of weapon at the instance of the accused. He has admitted in the cross-examination that he has not recorded statement of the boy who was accompanied the accused at the time of the incident.

13 The learned Counsel appointed for the appellant submits that in fact, according to P.W. 1, at the time of incident, there were several customers in the shop and that he was distributing grains to them. The said statement is not corroborated by P.W. 3 who happens to be the father of the injured and according to P.W. 3, there was no

customer in the shop at the time of incident. According to the learned Counsel appointed for the appellant, P.W. 3 has deposed accordingly only in order to eliminate any independent witness. There is no eye witness to the incident and therefore, the case rests upon the deposition of P.W. 1 and P.W. 3, who have categorically stated that the present appellant happens to be the author of the said injury.

14 It is further submitted that in the absence of test identification parade, the identification in court as substantive evidence would have no relevance or significance for the simple reason that the accused happens to take a particular seat at the trial and on the basis of the said fact the witness can identify the person as the accused.

15 The learned APP submits that the accused has not challenged the same by way of cross-examination. Moreover, in the statement under Section 313 of the Code of Criminal Procedure, 1973, the accused has stated that he is not concerned with the incident and he

was picked up from his house at about 9 p.m. The learned APP submits that the report of the Chemical Analyser would also show that blood stains of the injured were found on the weapon which was recovered at the instance of the accused.

16 It cannot be said that the appellant has been falsely implicated for the simple reason that there was no motive for false implication by the complainant. Identification in the court is a substantive evidence coupled with the fact that there is recovery of sickle at the hands of the appellant. That P.W. 1 has categorically stated that he tried to ward off the injuries. The sickle had landed upon his right fore arm and right side of the chest. The injury on the chest is the extension of the injury on the fore arm. It appears that P.W. 1 and P.W. 3 were not distributing goods in accordance with law and being enraged with the same, the accused wanted to verify as to whether the stock was available or not. The accused had no motive to assault P.W. 1. It was on the spur of the moment. That the accused had assaulted P.W. 1. It can not be said that the appellant had attempted

to murder the injured P.W. 1, but it was a voluntary hurt caused by the appellant.

17 Section 324 of the Indian Penal Code reads thus :

“324. Voluntarily causing hurt by dangerous weapons or means.—Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

In view of this, it is clear that the appellant has voluntarily caused hurt by dangerous weapon. Hence, the appellant deserves to be convicted for the offence punishable under Section 324 of the Indian Penal Code.

18 The applicant was in jail from 17/4/1993 to 12/5/1993 and from 3/12/1996 to 22/12/1996. Hence he deserves to be sentenced to the period already undergone and sentence of fine deserves to be maintained.

19 Before parting with the judgment, this Court appreciates learned Advocate Mr. Ujwal Gandhi, for his best efforts put in to espouse the cause of the appellant. His professional fees are quantified at Rs. 1500/- to be paid to him within 3 months from today.

20 Hence, following order is passed :

ORDER

- (i) The appeal is partly allowed.
- (ii) Conviction of the appellant for the offence punishable under Section 307 of the Indian Penal Code vide Judgment and Order dated 3/12/1996 passed by the 4th Additional Sessions Judge, Pune in

Sessions Case No. 398 of 1993 is hereby quashed and set aside. Instead, the appellant is convicted for the offence punishable under Section 324 of the Indian Penal Code and sentenced to the period already undergone. The sentence of fine is maintained.

(iii) The bail bond stands cancelled.

21 The Appeal is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)