

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 987 OF 2008**

Raj @ Pappi Chandu Kadam,
Age 21 years, Occupation -
Residing at Shukla Compound,
Behind CIDCO, Boisar, Tal. Palghar

...Appellant
(Org. Accused No. 3)

Versus

The State of Maharashtra
(At the instance of Boisar Police Station,
Tal. Palghar)

...Respondent

**WITH
CRIMINAL APPEAL NO. 852 OF 2008
(Against Conviction)**

Santosh Ramesh Mishra,
Age : About 24 years, Occu.: Service,
R/at : CIDCO Colony, T/143,
Opposite Dalal Hospital, Boisar,
Tal.: Palghar, District : Thane

...Appellant
(Org. Accused No. 1)

Versus

The State of Maharashtra
At the instance of Boisar Police Station,
Tal. Palghar, District : Thane

...Respondent
(Org. Complainant)

Mr. Shailesh Kantharia for the Appellant in Apeal/987/2008

Mr. S. N. Joshi for the Appellant in Appeal/852/2008

Ms. A. A. Takalkar, A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE, J.
DATED : 7th DECEMBER, 2016

ORAL JUDGMENT :

1. Heard learned Counsel for the parties.
2. Both these appeals arise out of the same judgment and order of conviction and sentence and hence are disposed of by a common judgment. The aforesaid Criminal Appeal No. 852 of 2008 is preferred by the original accused No. 1- Santosh Ramesh Mishra and Criminal Appeal No. 987 of 2008 is preferred by Raj @ Pappi Chandu Kadam-original accused No. 3. Original accused No.2-Surjit Jagdish @ Amarsingh Thakur, has not preferred any appeal.
3. By the judgment and order dated 27th June, 2008 passed by the learned Sessions Judge, Palghar, Thane in Sessions Case Case No. 190 of 2005, the aforesaid appellants and co-accused Surjit Jagdish @ Amarsingh Thakur have been convicted and sentenced as under :

- for the offence punishable under Section 324 r/w 34 of the Indian Penal Code to suffer RI for 3 years and to pay fine of Rs. 1,000/-, in default, to undergo further imprisonment for 3 months.

4. Few facts as are necessary to decide these appeals are as under :

The incident in question has taken place on 19th August, 2005 at about 11:15 a.m. near Shukla Compound Naka. It is alleged by the prosecution, that the aforesaid appellants and Surjit were standing on the said spot and that when Amol Pawar (complainant and injured) passed from the said spot, Raj @ Pappi Chandu Kadam and Surjit Jagdish @ Amarsingh Thakur held Amol and Santosh Ramesh Mishra assaulted him with a knife on his chest, neck, etc. It is alleged that PW 1-Shamsher Mohamad Aslam Khan, a friend of Amol came there and intervened in the assault, pursuant to which, the appellant-accused left the spot. Amol was taken to the hospital by Shamsher. When Amol was undergoing treatment, the police from the Boisar Police Station came to the hospital and recorded his statement (Exhibit 40), pursuant to which, CR No. I-77/2005 was registered

as against the appellants and co-accused Surjit Jagdish @ Amarsingh Thakur for the offences punishable under Section 307, 323 r/w 34 of the Indian Penal Code. After the FIR was registered, investigation commenced i.e. spot panchnama was prepared, the clothes of the accused and the injured were seized, statements of witnesses were recorded, clothes were sent to the Chemical Analyser, etc. The appellant-Santosh is alleged to have made a disclosure statement, pursuant to which, a blood stained knife was recovered at his instance. After investigation, charge-sheet was filed in the Court of the learned Judicial Magistrate First Class. As the offence was sessions triable, the learned Judicial Magistrate First Class committed the case to the Court of Sessions for trial.

The appellant/accused pleaded not guilty and claimed to be tried. The defence of the appellants was of total denial and false implication.

The prosecution, in support of its case, examined 9 witnesses; PW 1-Shamsher Mohamad Aslam Khan, a friend of injured Amol and an eye-witness to the said incident; PW 2-Ganesh Pawar, panch to the seizure

of clothes of Amol (complainant and injured); PW 3-Akhilesh Singh, panch to the arrest panchnama of the accused (hostile); PW 4-Roshan Yuvraj Kirankar, panch to the recovery of knife at the instance of Santosh (hostile); PW 5-Amol Pawar, complainant and injured witness; PW 6-Shivappa Kushalkar, an eye-witness to the incident (hostile); PW 7-Suresh Jadhav, panch to the spot panchnama (hostile); PW 9-Dr. Suryanarayan Raju, the medical Officer, who examined Amol and PW 9-PSI Sanjay Jagtap, the Investigating Officer.

The learned Sessions Judge, after hearing the parties, was pleased to convict and sentence the appellants and co-accused Surjit as aforesaid in para 3 above.

5. Mr. Joshi, learned Counsel for the appellant in Appeal No. 852 of 2008 submitted that the appellant-Santosh has been falsely implicated in the said case. He submitted that there is no recovery at the instance of appellant-Santosh and that the panch witness to the alleged recovery, has turned hostile. He submitted that though the incident had allegedly taken place in broad day-light and in a crowded area, no independent witness had

been examined in the said case and that the only witnesses who have been examined, are interested witnesses. He submitted that the weapon i.e. knife which was seized at the instance of appellant-Santosh was not shown to the doctor i.e. PW 8- Dr. Suryanarayan Raju and that no question was asked to the said witness, whether the injuries caused to Amol were possible with the said weapon. He submitted that despite the fact, that motive has been disbelieved by the learned Sessions Judge, the learned Judge has convicted the appellant. According to Mr. Joshi, even the presence of PW 1-Shamsher is doubtful, considering the fact that he has not sustained any injuries, as is alleged by the prosecution and considering his conduct and the delay that had occurred in recording his statement. He submitted that PW 5-Amol, (complainant and injured) had several criminal antecedents and hence, the possibility of some other persons assaulting him cannot be ruled out. He submitted that although the learned Judge had come to the conclusion in para 31 of the judgment that the injuries were not established, yet, the appellant was convicted for the offences under Sections 324 r/w 34. He lastly submitted that the weapon that is recovered is a knife as is evident from the panchnama, whereas, what was allegedly used was a Rampuri knife and as such, there is a discrepancy in the description of the weapon, in

the panchanama and the evidence. He relied on several judgments in support of his submission.

6. Mr. Kantharia, learned Counsel for the appellant-Raj @ Pappi Chandu Kadam in Criminal Appeal No. 987 of 2008, supported the submissions advanced by Mr. Joshi. According to Mr. Kantharia, the prosecution had failed to prove as to who had handed over the injured's clothes to the police i.e. whether Amol's clothes were handed over by Amol himself or by PW 1-Shamsher. He submitted that in the evidence, it has come that there was a motorcyclist at the spot when the incident took place, however, the said motorcyclist has not been examined. He submitted that PW 8- Dr. Suryanarayan Raju has not supported the prosecution case and as such the benefit of doubt ought to be given to the appellant/accused.

7. Learned A.P.P submitted that no interference was warranted in the impugned judgment and order of conviction and sentence. She submitted that PW 5-Amol Pawar's evidence is corroborated by PW 1-Shamsher's evidence and that the said ocular evidence is corroborated by the medical evidence i.e. evidence of PW 8-Dr. Suryanarayan Raju. She

further submitted that the Chemical Analyser's report also shows that the blood group found on the articles i.e. clothes of the accused as well as on the knife, was the blood group of Amol Pawar i.e. 'O' group. She submitted that merely because the knife was not shown to the doctor, the same was not fatal to the prosecution case, inasmuch as, PW 5-Amol Pawar has identified the knife with which he was assaulted. She further submitted that merely because the panch to the recovery panchanama (knife) had turned hostile, would not justify rejection of the evidence of recovery, more particularly, when the recovery was proved by the Investigating Officer. She submitted that the FIR was lodged promptly on the very same day, soon after the incident and that the appellants' names have been disclosed in the said complaint/FIR. The learned A.P.P also relied on several judgments to buttress her submission.

8. Perused the papers, the evidence and all documents with the assistance of the learned Counsel for the parties.

9. It would be necessary to first consider the evidence of PW 5-Amol Pawar, the Complainant and injured witness. PW 5-Amol

Pawar has, in his evidence, stated that he knew all the appellant/accused. He has stated that on 18th August, 2005 at about 11:00 a.m, when he asked the appellant-accused, who were standing at the *naka* of Shukla Compound, not to tease the girls, they threatened him. According to PW 5-Amol Pawar, on 19th August, 2005, he opened the grocery shop at about 7:00 a.m.; at about 10:00 a.m., he asked his sister Vaishali who had visited the said shop, to sit in the shop, after which he visited his brother's shop at Bhimnagar; and at about 10:30 a.m., he again returned back to his grocery shop. He has stated that at about 11:15 a.m., when he reached the Shukla Compound Naka, the appellant-accused and co-accused Surjit were present at the spot and on seeing him, the appellant-Raj @ Pappi and co-accused-Surjit held his hands and appellant-Santosh stabbed him with a knife below his chest on the left side, on the chest, over the forehead and right eyebrow and over the right side of his head. He has stated that when his friend Shamsher Khan (PW 1) came to rescue him, the appellant-accused also assaulted him. According to PW 5-Amol Pawar, as he had sustained bleeding injuries in the assault, Shamsher Khan carried him to Om Medical Centre, run by Dr. Suryanarayan Raju (PW 8). He has stated that the police came to the hospital and recorded his complaint, which is at Exhibit 40. He

has identified his signature and contents in the complaint to be true and correct. He has stated that the police seized his blood-stained clothes. He has also identified the knife used in the assault as being the same with which he was assaulted.

In the cross-examination of the said witness, certain questions were put to show that there was some money transaction between the appellant-Santosh and Shamsheer Khan (PW 1). A suggestion was also made to PW 5-Amol Pawar that he had asked the appellant-Santosh not to come in the said area and demand money, which suggestion was denied by him. It was also sought to be suggested to the said witness that he gave a blow from the blunt side of the knife on the appellant-Santosh's back, which was also denied by him. PW 5-Amol Pawar has admitted that he did not know the names of the girls, whom the appellant-accused were teasing and that neither had he lodged any complaint about the threat allegedly given by the appellant-accused on 18th August, 2005. He has admitted that there were about three carts selling vada pav, etc. near the area where the incident took place and that during the said incident, none of the cart pliers nor people from the nearby garage, came to his rescue. He has

also admitted that PW 1- Shamsher Khan and Kamlesh carried him to the hospital and that the history of assault was disclosed by him to the doctor. He has also admitted that the police seized his clothes in his presence and that he had handed over the said clothes to the police. He has also stated that Shamsher Khan (PW 1) had received an injury over his right cheek. He has denied other suggestions made to him that he was falsely deposing that he was assaulted by the appellant-accused on 19th August, 2005; that appellant-Raj @ Pappi and co-accused- Surjit held his hands and that appellant-Santosh stabbed him with knife; that his friend Shamsher Khan came to his rescue, but the appellant-accused assaulted him too; that he had made a false statement that the police had seized his blood-stained clothes and that he has lodged a false complaint against the appellant-accused due to previous enmity.

A close scrutiny of PW 5-Amol Pawar's evidence shows that he is a reliable and trust-worthy witness, who had sustained injuries in the assault. There is nothing which has come in the cross-examination of the said injured witness, to disbelieve or discredit his testimony, nor is there anything to suggest that there was any reason for him to falsely

implicate the appellant-accused. As soon as PW 5 – Amol Pawar was taken to the hospital, the police reached the hospital and recorded his statement, which is at Exhibit 40. The said complaint was lodged soon after the incident and the said complaint discloses the names of the appellant-accused, Raj @ Pappi and Santosh and co-accused, Surjit.

10. The evidence of PW 5 – Amol Pawar is corroborated by the evidence of PW 1- Shamsheer Khan. PW 1- Shamsheer Khan has stated in his evidence that he knew Amol Pawar and his brother-Ganesh. He has stated that on 18th August, 2005, the appellant-accused were present near Shukla Compound Naka, when Amol Pawar came there and asked the appellant-accused not to tease the girls, pursuant to which, the appellant-accused threatened him with dire consequences. He has stated that on 19th August, 2005, at about 11:15 a.m., when he was proceeding from Boisar Tarapur Road towards Ganesh's shop, he saw that appellant-Raj @ Pappi and co-accused Surjit had held Amol's hands and that appellant-Santosh was assaulting Amol with a knife. He has stated that though he intervened, Santosh continued to assault Amol. He has stated that Amol sustained injuries over his forehead, over the eye-brow, the left side of chest,

shoulder, etc. According to PW 1 – Shamsheer, he carried Amol to Dr. Suryanarayan's hospital and informed the incident to Amol's brother on phone. He has identified the appellant-accused.

In the cross-examination, several suggestions were put to the said witness, however, the said suggestions were denied by him. An omission was brought on record that he had not disclosed to the police that he was proceeding from Boisar Tarapur Road to Shukla Compound Naka at the relevant time. The said omission cannot be termed as a material omission, so as to discredit the testimony of PW 1 – Shamsheer Khan. He has admitted that he has not sustained any injury when he intervened in the quarrel and has stated that he had carried Amol to the hospital, as a result of which, his clothes were also blood-stained. He has admitted that Amol had given history to the doctor regarding how he sustained injury and also admitted that he informed Amol's brother Ganesh about the said incident. He has stated that when the police came to the hospital, they did not make any inquiry with him and that he narrated the incident to the police on the next day of the incident. He has denied the suggestion that he was falsely deposing and that he had not witnessed the incident.

A perusal of the statement of PW 1 – Shamsher Khan shows that he was present at the spot at the time of assault and had carried Amol to the hospital. His statement appears to be truthful and reliable. Infact, the presence of PW 1–Shamsher has been disclosed by Amol, in his complaint, which was lodged immediately, on the same day. Merely because PW 1 – Shamsher Khan's clothes were not seized by the police and his statement was recorded on the next day, cannot be a ground for disbelieving his testimony.

11. The evidence of PW 5 – Amol Pawar and PW 1 – Shamsher Khan has also been corroborated by PW 8 – Dr. Suryanarayan Raju. PW 8 – Dr. Suryanarayan was running Om Medical Centre at Boisar at the relevant time. He has stated that on 19th August, 2005, he examined Amol Pawar and noticed the following injuries :

“i) Incised wound on left lower chest above costal line : posterior axillary line:

ii) Incised would on left mid chest 1” x ¼” x deep in mid axillary line

iii) Incised wound on left mid chest 1” x ½” x deep in posterior axillary region

*iv) Incised wound on left side of neck 1" x ¼" x deep
toothy secretion seen;*

v) incised wound on mid forehead 1" x ¼" x bone deep

*vi) incised wound on left shoulder 1 cm x ¼th c.m. x
subcutaneous deep.*

*vii) Incised wound with friction abrasion right side offace
on eyebrow on lateral aspect of eye 1½ cm x 1 cm."*

He has stated that the age of injury was caused within 15 minutes and active bleeding was present. He has stated that the injury was possible by a sharp instrument. He has stated that he issued a Medical Certificate, which is at Exhibit 45 and has identified his signature on the said Certificate.

In the cross-examination, PW 8 – Dr. Suryanarayan has deposed that the patient was brought by a relative; that he was conscious and that the history of assault was given by the patient himself. He has stated that the history of assault that was disclosed was written by him on the Medical Certificate. He has admitted that he informed the police after noting down the history and treated the patient Amol Pawar.

A perusal of the evidence of PW 8 – Dr. Suryanarayan shows that Amol Pawar was brought to the hospital within 15 minutes of the incident; that he was bleeding profusely and that he was conscious and that the history was given by the patient himself. The history as reflected in Exhibit 45, reads thus :

“Alleged H/O of stab injury today-bleeding”.

The evidence of PW 8 – Dr. Suryanarayan and the Medical Certificate shows that Amol Pawar had sustained as many as 7 incised injuries on his chest, neck, forehead, shoulder and eyebrow.

12. Learned Counsel for the appellant-accused urged that the weapon was not shown to the doctor and as such, the recovery of knife is not proved, as the doctor was unable to opine that the injuries as noted by him, were caused by the same weapon. No doubt, the weapon was not shown to PW 8 – Dr. Suryanarayan, however, nothing much turns on the same.

No doubt, it would have been appropriate for the prosecution to show the weapon to PW 8 – Dr. Suryanarayan, however, merely because

the weapon was not shown to the doctor, the same cannot be said to be fatal to the prosecution case. PW 8 – Dr. Suryanarayan has stated in his evidence that the injuries were possible by a sharp instrument. What is pertinent to note is that the weapon was shown to PW 5 – Amol Pawar, who has identified the weapon with which he was assaulted and the same cannot be lost sight of.

13. Apart from the aforesaid material on record, the Chemical Analyser's report shows that the blood group of Amol was 'O' and the blood-stained knife recovered at the instance of Santosh shows that the blood group found on the same was 'O'. The CA report also reveals that the clothes of appellant-Santosh which were seized also shows that blood group found on the said clothes was 'O', which is the blood group of Amol.

14. Apart from the aforesaid evidence, there is recovery of knife at the instance of appellant-Santosh. No doubt, the panch to the recovery of knife has turned hostile, nevertheless, the said recovery has been proved through the evidence of the Investigating Officer i.e. PW 9-PSI Sanjay Jagtap. Merely because the panch witness has turned hostile, would not be

a ground to discard the evidence of recovery at the instance of the appellant-Santosh. The Investigating Officer PW 9-PSI Sanjay Jagtap, has proved the panchnama and as such reliance can be placed on the said recovery.

15. As contended by Mr. Kantharia, merely because the motorcyclist's statement, who was present at the time of the assault, has not been recorded, does not mean that no such incident took place. In the facts, both, the injured-Amol and PW 1-Shamsher's evidence is found to be reliable and trustworthy.

16. Having considered the overall evidence on record, no interference is warranted in the impugned judgment and order. Accordingly, the appeals are dismissed.

REVATI MOHITE DERE, J.