

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1295 OF 2013

BHARAT RAJU LOKHANDE

)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Shri Kaushik Mhatre, Advocate for the Appellant.

Shri V.B.KondeDeshmukh, APP for the Respondent - State.

CORAM : ABHAY M. THIPSAY, J.

DATE : 2nd MARCH 2016.

ORAL JUDGMENT :

1 This appeal is directed against the judgment and order dated 21st November 2013 delivered by the Ad-hoc Additional Sessions Judge for the Greater Bombay, in Sessions Case No.244 of 2012, convicting the appellant who was the sole accused in the said case, of offences punishable under Section 307 of the Indian Penal Code (IPC) and Section 135 of the Bombay Police Act (now Maharashtra Police Act) read with Section 37(i)(a) thereof. The learned Ad-hoc Additional Sessions Judge sentenced the appellant

to suffer Rigorous Imprisonment for 10 years and to pay a fine of Rs.10,000/-, in default, to suffer Simple Imprisonment for 4 months, with respect to the offence punishable under Section 307 of the IPC and to suffer Rigorous Imprisonment for 1 year with respect to the offence punishable under Section 135 of the Maharashtra Police Act. The learned Ad-hoc Additional Sessions Judge directed that the substantive sentences would run concurrently.

2 The prosecution case, as put forth before the trial court, may in brief, be stated thus :

 The appellant and one Sachin Surve (PW3) – the victim – used to reside in the same locality and knew each other well. There was enmity between them. As a result of this enmity, on 4th December 2011, at about 2.30 p.m., the appellant assaulted the said Sachin Surve (PW3) by a knife, giving a blow in the abdomen of Sachin Surve. The blade of the knife remained inside the body of Sachin Surve, which was taken out after performing a surgery. The assault on Sachin Surve was witnessed

by his sister – Suvarna Surve (PW1), who happened to be present there. When Suvarna raised cries, her mother Vandana Surve (PW2), who was in her house (near which the assault took place), came out and saw the appellant running away from the scene of offence. Suvarna lodged a report with the police which was treated as First Information Report (FIR) at Exhibit 11. Sachin Surve was taken to Rajawadi hospital, where he was admitted for about nine days. The appellant came to be arrested on 10th December 2011. In the course of investigation, blood stained clothes, which Sachin was allegedly wearing at the time of the incident, were recovered. The part of the knife that had remained in the body of Sachin Surve, which had been taken out by performing surgery, was also handed over by the Medical Officer attached to Rajawadi hospital, to the police.

3 On completion of investigation, charge-sheet was filed against the appellant alleging commission of the offence punishable under Section 307 of the IPC, who was tried, convicted and sentenced, as aforesaid.

4 I have heard Shri Kaushik Mhatre, the learned counsel for the appellant. I have heard Shri V.B.KondeDeshmukh, the learned APP for the State. With their assistance, I have gone through the entire evidence adduced during the trial. I have also gone through the impugned judgment.

5 The prosecution examined totally eleven witnesses during the trial. The first is Suvarna Surve, sister of Sachin Surve – the victim – and an eye witness. The second is Vandana Surve, mother of Sachin Surve, who appeared on the scene of offence, immediately after the incident had taken place. The third witness is the victim Sachin Surve himself. The fourth witness Dr.Deepak Patel, a Medical Officer, attached to Rajawadi hospital, is the one who had treated Sachin Surve on his admission into the said hospital on 4th December 2011. The fifth witness Maruti Patil, A.S.I, attached to Pant Nagar Police Station at the material time, is the one who had promulgated the prohibitory orders as contemplated under Section 37 of the Maharashtra Police Act.

The sixth witness Santosh Chavan is a Police Naik, who had taken charge of the blood stained clothes of Sachin from Rajawadi hospital. The seventh witness Ramjai Shukla is a panch in respect of the alleged disclosure statement made by the appellant, pursuant to which, the handle of the knife which was used for assaulting and the clothes of the appellant were recovered under a composite panchnama (Exhibit 21 and Exhibit 22) on 13th December 2011. The eighth witness Balu Solat, Assistant Police Inspector, attached to Pant nagar Police Station at the material time, is the one, who had received information in respect of the offence and had registered the FIR. He had also also carried out certain further investigation into the matter such as proceeding to the spot, seizing the clothes of the injured Sachin Surve under a panchnama (Exhibit 25) etc. The ninth witness Sachin Khandekar is a panch in respect of the seizure of the clothes of the victim. The tenth witness is Navnath Gopale, who was supposed to be an eye witness to the incident, did not support the case of the prosecution and was declared hostile. The eleventh witness Vilas Jadhav, Inspector of Police, attached to Pant Nagar Police Station

at the material time, is the one who completed investigation and filed charge-sheet against the appellant.

6 The appellant adduced defence evidence by examining himself as a witness.

7 A number of contentions are raised by the learned counsel for the appellant. He submitted that the appellant was not ably defended at the initial stage of the trial, and that, though he was provided with legal aid, there had been no satisfactory cross-examination of the prosecution witnesses on material aspects. He also submitted that the injured himself was having past criminal record, and that, the injured was an accused in a case of assault on the brother of the appellant, which case was also in respect of an offence punishable under Section 307 of the IPC, and that, the same is still pending. It is also contended that the evidence indicated that the appellant had been externed from the area of BrihanMumbai and Thane, and that, he had returned to Mumbai by committing breach of the externment order. It is

submitted that the defence of the appellant that apprehending some assault from the victim, he had given a push to him, as a result of which the victim had fallen down, and was got injured with the knife which the victim himself was having, was probable. It is submitted that, in any case, considering the character and antecedents of the victim, the sentence imposed by the trial court upon the appellant is too harsh and needs to be interfered with.

8 After carefully going through the evidence of the victim Sachin Surve (PW3), the evidence of Suvarna (PW1), and Vandana Surve (PW2), I do not find any reason to doubt that the incident, as alleged, has indeed taken place. I have taken into consideration the defence of the appellant that the injury had been caused to the victim accidentally while the victim was pushed by the appellant for defending himself against a possible attack. I am, however, unable to accept such a theory, keeping in mind that there were no injuries on any other part of the body of the victim indicating or suggesting a fall. Secondly, the injury appears to be sufficiently deep to rule out the possibility of the

same having been accidentally caused. In my opinion, therefore, that at the given time and place, the appellant indeed assaulted the victim with a knife by giving a blow to the victim in his abdomen, cannot be doubted or disputed.

9 There would be some difficulty in considering whether the offence that has been committed by the appellant would be one falling under the penal provisions of Section 307 of the IPC or would amount to a lesser offence. It is because, there is no satisfactory medical evidence with respect to the nature and seriousness of the injury. Nevertheless, there appears to be enmity between the appellant and the victim; and as a matter of fact, that they were on inimical terms is an admitted position. Vandana (PW2) has attempted to build the theory of the intention of the appellant being that of causing the death of the victim, on the basis that 'on a previous occasion, when Vandana had gone to the court in connection with the case in which the victim Sachin is an accused, the appellant had said to her that he would not spare Sachin, and that, he would beat him by coming to his (Sachin's)

area.' However, it is difficult to place much reliance on this evidence, in as much as, the same was not reported to the police at the time when it allegedly took place. Though this incident is said to have taken place in the court campus, no steps to bring this to the notice of the court, were taken. Moreover, the utterances attributed to the appellant, even if accepted as true just for the sake of arguments, do not disclose an intention to attack the victim Sachin *for the purpose of killing him*. As such, not much assistance is derived from this evidence to ascertain the motive behind the attack.

10 Nevertheless, the injury had been caused on a vital part of the body. The weapon is a sharp edged weapon. Though only one blow was given, it cannot be speculated as to whether the appellant indeed wanted to give only one blow, as the knife got stuck in the body of the victim. It could not be pulled out as the handle got separated. Therefore, that only one blow was given, is not a conclusive factor in favour of the appellant.

11 In these circumstances, the evidence of Dr. Deepak Patel, which has not been seriously challenged, assumes importance. In his evidence, he has stated that the injury was on a vital part of the body, that it was serious, and that, in the ordinary course, the death of the patient was possible due to such type of injury. Since this opinion of the doctor has not been challenged in his cross-examination, I see no reason to disregard it. As such, it has to be held that, had death been caused by the blow given by the appellant to the victim, the offence would be that of murder which is punishable under Section 302 of the IPC. It, therefore, follows that, the conclusion arrived at by the trial court, that the appellant is guilty of an offence punishable under Section 307 of the IPC, cannot be faulted with.

12 In view of the fact that the evidence of the victim Sachin Surve (PW3), Suvarna (PW1), and Vandana (PW2) is sufficient to prove that the alleged guilty act was indeed committed by the appellant, it is not necessary to discuss the other

evidence in depth, except observing that the same corroborates the theory of prosecution.

13 One aspect of the matter, however, needs to be seriously considered, and that is, whether the sentence imposed upon the appellant needs to be interfered with. Indeed, in this case, the victim himself is having a criminal record. A.P.I.Balu Solat has categorically admitted in his evidence that there were many criminal cases pending against the victim Sachin Surve, and that, he was a habitual criminal. He also admitted that Sachin Surve had been externed from the city of Mumbai. It is also a fact that a case in respect of an assault on Yogesh, brother of the appellant, is pending against the victim Sachin Surve, and that, that case also relates to an offence punishable under Section 307 of the IPC. In these circumstances, it is to be appreciated that the appellant must be entertaining a fear or apprehension of being attacked or assaulted by the victim and the fact of having such belief or fear in mind, might have resulted in his attacking the victim.

14 Though the victim was said to have been externed from the areas of BrihanMumbai and Thane, the evidence on record does not show *whether at the material time, the appellant had been so externed, and whether he had committed any breach of the externment order by returning to Mumbai.* Though such a submission was made by the learned counsel for the appellant, I do not find any evidence to support the same, and all that can be read into evidence is that *at some point of time, the victim had been externed from BrihanMumbai and Thane.*

15 Considering all the relevant aspects of the matter, including the circumstances in which the offence came to be committed, as also the antecedents and character of the victim, I am of the opinion that the sentence imposed by the learned Ad-hoc Additional Sessions Judge with respect to the offence punishable under Section 307 of the IPC, ought to be reduced. At the same time, I am of the opinion that the victim Sachin Surve should be awarded suitable compensation for the pain and sufferings undergone by him due to the assault.

16 In the result, the order of conviction of the appellant in respect of the offence punishable under Section 307 of the IPC and the offence punishable under Section 135 of the Maharashtra Police Act, is maintained. However, the substantive sentence imposed in respect of the offence punishable under Section 307 of the IPC is reduced to Rigorous Imprisonment for 7 years. The sentence of fine is, however, enhanced to Rs.25,000/-. In default of payment of fine, the appellant shall undergo Rigorous Imprisonment for 6 months.

17 If the fine is realized, an amount of Rs.20,000/- therefrom be given to the victim Sachin Surve as compensation.

18 If the appellant has already paid the amount of fine of Rs.1,000/- in respect of the offence punishable under Section 307 of the IPC, it be adjusted and set off against the amount of fine that he would be required to deposit by virtue of this order.

19 Subject to this reduction in the substantive sentence, and enhancement of the sentence of fine, the appeal is dismissed.

(ABHAY M. THIPSAY, J.)