

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 803 OF 1998**

1. Ramchandra Vitthal Jankar,
Age 19 years, Occ. Labourer
2. Anil Vitthal Jankar,
Age 21 years, Occ. Labourer,
3. Sadashiv Bhagoji Lambore,
Age 21 years, Occ. Labourer,

All residents of Kapoor Vasahat,
Kadamwadi, Kolhapur.

...Appellants
(Orig.Accused)

Versus

The State of Maharashtra

...Respondent

Mr. Shekhar A. Ingawale for the Appellant

Mrs. P. P. Shinde for the Respondent-State

CORAM : REVATI MOHITE DERE, J.
TUESDAY, 9th MAY, 2017

ORAL JUDGMENT :

1. Heard learned Counsel for the appellant and the learned A.P.P
for the State.

2. By this appeal, the appellants have impugned the judgment and order dated 8th October, 1998 passed by the 3rd Additional Sessions Judge, Kolhapur in Sessions Case No. 140 of 1997, convicting them for the offences punishable under Section 307 r/w 34 and Section 323 r/w 34 of the Indian Penal Code ('IPC').

3. Without going into the merits, the only submission of the learned Counsel for the appellants is that taking the prosecution case as it stands, no offence under Section 307 is disclosed *qua* any of the appellants. He submitted that the offence, if any, would be one under Section 324 r/w 34 of the IPC.

4. A few facts as are relevant for deciding the appeal are as under :

Two incidents took place at Village Kadamwadi on 31st May, 1997; one at about 11:15 p.m. and the second about 11:45 p.m. The informant is PW 4-Ramchandra Vitthal Edge. He has stated that his brother Subhash Edge (PW 7) was in love with the appellant Nos. 1 and 2's sister Sarika. He has stated that the families of both, the appellants as well

as the complainant were aware about their love affair and had decided to solemnize their marriage. He has stated that 8 days prior to the incident dated 31st May, 1997, there were talks regarding the marriage of Sarika with Subhash Edge (PW 7) and that the parents of both were present in the said meeting. He has stated that in the meeting, they demanded a gold chain of one tola, one cot and clothes from Sarika's father i.e. appellant Nos. 1 and 2's father. He has stated that they too had offered to give Sarika 2 tolas of gold and clothes. According to the complainant, Sarika's father wanted Sarika's marriage to be performed with Subhash in the same pandal, in which his son's marriage was to be performed. The complainant has further stated, that Sarika's father had disclosed to his father that he would not be able to satisfy their demands and hence, things fizzled out.

5. According to the complainant, on 31st May, 1997 at about 11:15 p.m., Subhash Edge (PW 7) went out and returned back within a few minutes, and disclosed that he had been assaulted by appellant No. 2-Anil Jankar with a knife on his right hand. Pursuant thereto, the complainant i.e. PW 4-Ramchandra Edge, PW 7- Subhash Edge, PW 8-Anil Edge and others went towards the house of the appellants to question them about the

said incident. It is alleged that when they reached near the appellants' house, all the appellants were present there; that appellant No.2-Anil Jankar was armed with a sword; appellant No.1-Ramchandra Jankar, with a knife and appellant No.3-Sadashiv Lambore, with a stick. He has stated that appellant No.2-Anil Jankar assaulted Anil Edge (PW 8) with a sword on his chest and back. Thereafter, appellant No.1-Ramchandra Jankar is alleged to have assaulted Subhash Edge (PW 7) with a knife on his stomach and appellant No.3-Sadashiv Lambore is alleged to have assaulted the complainant-Ramchandra Edge (PW 4) on his head. It is alleged that after hearing hue and cry, people gathered at the spot and the injured were taken to the hospital. According to the complainant, the injured i.e. Subhash Edge and Anil Edge were in an unconscious condition and that Subhash Edge (PW 7) was required to be operated.

6. The evidence of PW 7-Subhash Edge and PW 8-Anil Edge is more or less similar. PW 7-Subhash Edge has stated that he was assaulted by Anil Jankar (appellant No.2) in the first incident, which took place on 31st May, 1997 at 11:15 p.m. He has further stated that thereafter the second incident took place at about 11:45 p.m., in which, all the accused

assaulted them with sword, knife and stick.

7. In order to prove the injuries of the injured, the prosecution examined PW 9-Dr. Trimbak Mane, Medical Officer, C.P.R Hospital, Kolhapur. Dr. Mane has stated that on 1st June, 1997, he was on duty at the said Hospital, when Anil Edge (PW 8) and Subhash Edge (PW 7) were admitted to the said Hospital. He has stated that he examined Anil Edge and found two injuries on his person; one stab wound over the left lion lateral aspect and an incised wound over the chest near the right nipple. The second injury is stated to be a simple injury. As far as the injuries of Anil Edge are concerned, PW 9-Dr. Mane has not stated that the first injury caused to Anil Edge, was sufficient, in the ordinary course of nature, to cause death. As far as PW 7-Subhash's injury is concerned, Dr. Mane found one injury on his person i.e. stab wound over the left lumbar region. Dr. Mane has stated that when Subhash was admitted to the Hospital, he was conscious and that he was subsequently operated by J. K. Banchode, V. N. Magdum and Dr. Z. R. Patil. PW 9-Dr. Mane has admitted that he was not in a position to state whether there was any internal injury caused due to the said stab wound. It is pertinent to note, that none of these doctors i.e.

Dr. Banchode, Dr. Magdum and Dr. Patil have been examined by the prosecution to show the seriousness of the injury caused, nor any medical case papers are placed on record to show, for how many days Subhash Edge (PW 7) was in the hospital and the treatment meted out to him. As far as PW 4-Ramchandra Edge is concerned, PW 9-Dr. Mane found one minor abrasion over the head. The said injury is stated to be a simple injury.

8. According to the witnesses, in the first incident that took place on 31st May, 1997, at 11:15 p.m., Subhash Edge was assaulted by Anil Jankar on his hand, as a result of which, he sustained a bleeding injury. Admittedly, no injury has been found on the hand/palm of Subhash Edge (PW 7). Except for the evidence of witnesses, no injury certificate is placed on record nor any medical evidence is adduced, which would lead credence to the ocular evidence. PW 9-Dr. Mane also does not speak about any injury having been caused to Subhash Edge on his palm/hand, as alleged. It thus appears that the genesis of the incident has been suppressed by the prosecution. However, there is no reason to disbelieve the evidence of the complainant and eye-witnesses that they were assaulted by the appellants. The only question is what is the offence alleged to have been

committed by the appellants.

9. No motive has come on record to show the reason for the appellants to cause the death of the complainant and others. No independent witnesses have been examined by the prosecution, though they were present at the time of the incident. Admittedly, even appellant Nos. 2 and 3 have sustained injuries on their hand and that the same is reflected in the evidence of PW 6-Ayaz Fakir, panch to the arrest panchanama and the evidence of the Investigating Officer. Admittedly, no medical case papers of Subhash Edge (PW 7) are placed on record or any doctors examined who allegedly operated Subhash, to show the nature and seriousness of the injury caused to him.

10. Considering the peculiar facts of this case and medical evidence that has come on record, the conviction of the appellants for the offence under Section 307 of the IPC, cannot be maintained. The ingredients of Section 307 are amiss in the facts of this case. However, in the facts, the appellants would be guilty under Section 324 of the IPC. Accordingly, following order is passed :

ORDER

- (i) The appeal is partly allowed.

- (ii) The order of conviction under Section 307 r/w 34 of the IPC is set-aside and instead, the appellants are convicted for the offence punishable under Section 324 r/w 34 of the IPC and are sentenced to suffer imprisonment already undergone and are directed to pay fine of Rs. 1,000/- each, in default, to suffer SI for three months.

- (iii) As far as the conviction under Section 323 of the IPC is concerned, the same is maintained and the appellants are sentenced to suffer imprisonment already undergone.

- 11. Appeal is disposed of on the aforesaid terms.

- 12. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.