

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.986 OF 2015

IN

CRIMINAL APPEAL NO.1094 OF 2015

WITH

CRIMINAL APPEAL NO.1094 OF 2015

Babu Gangaram Chandragiri
Age.25 Years, R/o.Hut No.307,
Dr.Babasaheb Ambedkar Nagar
Zopadpatti, Cuffe Parade,
Mumbai 400 005.

At Convict No.C-5350,
Kolhapur Central Prison,
District Kolhapur, Kalamba,
Maharashtra -416 007.

... **Applicant/Appellant**

V/s.

The State of Maharashtra,
Through Cuffe Parade Police
Station

... **Respondent**

.....

Ms.Yogita Deshmukh, Advocate for the Applicant/Appellant.
Mr.P.H.Gaikwad-Patil, APP for the Respondent/State.

....

CORAM : A.M.BADAR J.

DATED : 23rd MARCH 2017.

ORAL JUDGMENT :

1 In this appeal of the year 2015, Criminal Application bearing No.986 of 2015 came to be listed for hearing. Ms.Yogita

Deshmukh the learned Advocate appearing for the applicant/accused extensively argued the application for bail with reference to entire Record and Proceedings and requested this Court to dispose of the appeal itself in view of her arguments which covered merits of prosecution case. Hence, the appeal is being decided finally after hearing both the parties at sufficient length of time.

2 By this appeal, the appellant/accused is challenging his conviction for offence punishable under Sections 307, 385, 386, 504, 323 and 506 of the Indian Penal Code (For short, “the IPC”) and Section 37(i)(a) read with Section 135 of the then Bombay Police Act (Now Maharashtra Police Act). The appellant is sentenced to suffer rigorous imprisonment for 10 years on each count for offence punishable under Sections 307 and 386 of the IPC, apart of direction regarding payment of fine of Rs.300/- and in default to further undergo simple imprisonment of three months on each count. For the offence punishable under Section 385 of the IPC, he is sentenced to suffer rigorous imprisonment for one and half years and to pay fine of Rs.300/-, in default to further undergo simple imprisonment for three months. For the offence punishable under Section 504 of the IPC, the appellant/accused is sentenced to suffer rigorous imprisonment for one year and for the one punishable under Section 323 of the IPC, he is sentenced to suffer rigorous imprisonment for three months. For offence

punishable under Section 506 of the IPC, the appellant/accused is sentenced to suffer rigorous imprisonment for five years. For the offence punishable under Section 37(1)(a) read with Section 135 of the Bombay Police Act, the appellant/accused is sentenced to suffer rigorous imprisonment for six months. All substantive sentence were directed to run concurrently by the learned trial Court.

3 I have heard Ms.Deshmukh, the learned Advocate appearing for the appellant/accused. She argued that papers of medical treatment of injured P.W.No.2 Shabbir at Exh.32 proved by P.W.No.5 Dr.Mane shows that blood group of Shabbir was “B^{+ve}”, whereas C.A. report shows that the group of blood is “B” and, therefore, the entire prosecution case is suffering from doubt. It is further argued that P.W.No.1 Ramchandra had omitted to state the snatching of the gold chain as well as giving blow by knife on P.W.No.2 Shabbir. It is further argued that P.W.No.1 Ramchandra is friend of P.W.No.2 Shabbir. He deposed that he was slapped by the accused in presence of P.W.No.2 Shabbir, but P.W.No.2 Shabbir does not mention slapping by the applicant/accused to P.W.No.1 Ramchandra. The evidence of P.W.No.2 Shabbir shows that description of the knife was not recorded by police in his statement under Section 161 of the Code of Criminal Procedure (For short, “the Code”). The learned Advocate further argued that blood-stained clothes of P.W.No.2-

Shabbir were not seized by police. It is further argued that evidence of P.W.No.3 Shekhar Nirmal shows that the motorcycle on which the injured was carried to hospital was stained with blood. But that motorcycle was not seized. The statement of Laman was not recorded by police. According to the learned Advocate for the appellant/accused, as per version of P.W.No.9 Dr.Mane, injury suffered by P.W.No.2 Shabbir is possible by several other reasons. The evidence of P.W.No.7 Sushant Varale, Investigating Officer shows that the injured was taken to J.J.Hospital and not to Saint George Hospital and in that sense other witnesses came to be contradicted. The evidence of Investigating Officer P.W.No.8 Shyam Sonawane shows that weapon like knife seized in the crime in question is easily available in the market and, therefore, seized weapon cannot be attributed to the appellant/accused. The evidence of P.W.No.6 Hiranna Valmiki – panch witness shows that shirt came to be seized from the hospital on 30/06/2011, which is after 11 days from the date of the incident and, therefore, this evidence is also not reliable. With this, the learned Advocate appearing for the appellant/accused argued that the prosecution has failed to prove the offences alleged against the appellant/accused and, therefore, the appellant/accused is entitled for acquittal.

4 The learned Additional Public Prosecutor submitted that the prosecution has proved the charges levelled against the

appellant/accused by bringing on record the clear and cogent evidence. He argued that evidence of prosecution is reliable and trustworthy.

5 I have carefully considered the rival submissions and also perused Record and Proceedings including depositions of witnesses as well as documentary evidence placed on record by the prosecution in support of charges levelled against the appellant/accused.

6 According to the prosecution case, the appellant/accused had attempted to commit murder of P.W.No.2 Shabbir Kumusadi and in that process also committed several offences such as extortion by attempting to put P.W.No.1 Ramchandra in fear of death or grievous injury, criminal intimidation of prosecution witnesses etc. Considering the nature of charge, case of the prosecution is mainly based on evidence of injured P.W.No.2 Shabbir Kumusadi, P.W.No.1 Ramchandra as well as P.W.No.10 Sonu Nirmal, who are eye witnesses to the assault on P.W.No.2 Shabbir. Therefore, it would be apposite to consider evidence of P.W.No.1 Ramchandra Mali – the first informant at the outset. P.W.No.1 Ramchandra Mali has deposed that at about 6 p.m. on 19/06/2011, he was going to visit Dr.Modi. At that time, the appellant/accused had intercepted him and demanded amount of Rs.100/- for giving to a Samosa seller. P.W.No.1 Ramchandra stated that the appellant/accused had

whipped out a knife and threatened him for extorting money. Thereafter, he started chasing a person and as such P.W.No.2 as stated by him could managed to escape from clutches of the appellant/accused. He further testified that while undergoing return journey after visiting the Doctor at about 8.00 p.m. the appellant/accused was seen by him snatching gold chain of a person and on seeing P.W.No.1 Ramchandra, he again questioned P.W.No.1 Ramchandra about non-payment of Rs.100/- and then slapped P.W.No.1 on his cheek and ear. Then after taking out a button knife, the appellant/accused threatened P.W.No.1 Ramchandra, who started running away to save his life. At this juncture, as per version of P.W.No.1 Ramchandra, his friend P.W.No.2 Shabbir along with two others attempted to rescue him, but the appellant/accused has assaulted Shabbir with knife on right rib portion and continue to chase him. P.W.No.1 Ramchandra further deposed that he concealed himself near one vehicle and P.W.No.2 Shabbir was then taken to the hospital by two friends on the motorcycle. This witness has lodged report at Exh.12 on the very same day of the incident, which has resulted in registration of Crime No.104 of 2011 for the offences punishable under Sections 307, 384, 386, 388, 323, 504, 506 of the IPC against the appellant/accused.

7 Even on perusal of evidence of P.W.No.1 Ramchandra then it is apparent that he has categorically deposed that the

appellant/accused had given a blow of knife on right rib portion of P.W.No.2 Shabbir, as such I do not find that this fact is coming on record by way of omission. The substantive evidence of P.W.No.1 Ramchandra do mentions this fact. The evidence of P.W.No.1 Ramchandra is further gaining corroboration from the FIR lodged by him with promptitude. True it is that this witness in his FIR has not mentioned that there was snatching of gold chain by the appellant/accused, but the omission is only in respect of the type of article. The FIR shows that the appellant/accused had snatched some article from some unknown person and that person was requesting the appellant/accused to return back his article. Even otherwise, FIR cannot be an encyclopedia of the crime and what is relevant is already finding its place in FIR lodged by P.W.No.1 Ramchandra. As such, it cannot be said that the evidence of P.W.No.1 Ramchandra is suffering from omissions or contradictions.

8 P.W.No.2 Shabbir Haidar Kumusadi is the victim of the crime in question. This is a case of single accused and single victim. P.W.No.2 being injured victim of the crime in question, his evidence carries great weight and as the case is of the sole accused, there cannot be any possibility of false implication. Let us see whether evidence of P.W.No.2 Shabbir Haidar is trustworthy. He is driver of the truck. His version shows that after parking his truck at about 8.00 p.m. on 19/06/2011, he saw

altercations between the applicant/accused and P.W.No.1 Ramchandra. P.W.No.2 Shabbir has categorically stated that the appellant/accused has slapped P.W.No.2 Ramchandra on his cheek and ear and then had taken out a knife. P.W.No.2 Shabbir further stated that the appellant/accused started proceeding towards P.W.No.1 Ramchandra and, therefore, he had gone near P.W.No.1 Ramchandra and the appellant/accused. Then, as stated by P.W.No.2 Shabbir, the appellant/accused had assaulted him on right rib portion. Thereafter the appellant/accused has started chasing P.W.No.1 Ramchandra and he was taken to the hospital on motorcycle by Sonu and Laman.

9 The evidence of P.W.No.2 Shabbir as such shows that he had witnessed the incident of slapping the P.W.No.1 Ramchandra by the appellant/accused and as such it cannot be said that this witness has omitted to state about the incident of slapping P.W.No.1 Ramchandra by the appellant/accused. This injured witness has categorically stated that the appellant/accused is the author of the wound sustained by him. There is nothing in cross-examination of P.W.No.2 Shabbir to disbelieve his version regarding assault on him by the appellant/accused. Even if description of the knife allegedly stated by this witness is not recorded in his statement under Section 161 of the Code by the police, this inaction cannot be said to be discrepancy which goes to the root of the matter. What is relevant is whether it was the

appellant/accused who had caused wound to P.W.No.2 Shabbir by means of a knife and whether this act of the appellant/accused amounts to an attempt on life of P.W.No.2 Shabbir. In this view of the matter, I do not find any infirmity in evidence of P.W.No.2 Shabbir in order to jettison his version regarding the incident in question.

10 P.W.No.10 Sonu Nirmal is an eye witness to the incident in question. His presence on the scene of the occurrence is coming from the mouth of injured P.W.No.2 Shabbir. It is in evidence of P.W.No.10 Sonu Nirmal that along with P.W.No.2 Shabbir and one Laman, they were searching for their friend to load the dumper and at that time, they had witnessed the appellant/accused slapped the P.W.No.1 Ramchandra Mali. As per version of P.W.No.10 Sonu Nirmal, then appellant/accused had taken out a knife and started chasing P.W.No.1 Ramchandra Mali. This witness along with P.W.No.2 Shabbir and Laman attempted to rescue P.W.No.1 Mali. As stated by this witness, the appellant/accused then assaulted P.W.No.2 Shabbir by means of a knife on right side chest portion of P.W.No.2 Shabbir. This eye witness account given by P.W.No.10 Sonu Nirmal on the point of assault by the appellant/accused on injured P.W.No.2 Shabbir and his testimony is not at all shattered in the cross-examination.

11 P.W.No.1 Ramchandra and P.W.No.2 Shabbir and

P.W.No.10 Sonu Nirmal have categorically identified the appellant /accused while in the dock, so also muddemal article No.2 knife – the weapon of the crime. Availability of such type of weapon in the market cannot be a criteria to disbelieve the version of these eye witnesses.

12 P.W.No.9 Dr.Mane, the Medical Officer at Saint George Hospital, Mumbai had examined P.W.No.2 Shabbir Haidar on 29/06/2011. He had noticed a stab injury of size 3 c.m. x 2 c.m. muscle deep sustained by P.W.No.2 Shabbir. This Medical Officer also found that 7th rib of injured P.W.No.2 Shabbir was fractured. In the report of sonography, P.W.No.9 Dr.Mane has noticed laceration of liver. This Medical Officer further testified that all these injuries are attributed to a single stab wound by the knife. P.W.No.9 Dr.Mane has proved the papers of indoor treatment of P.W.No.2 Shabbir at the Saint George Hospital, Mumbai. It is thus clear that evidence of injured P.W.No.2 Shabbir is gaining corroboration from the medical evidence on record.

13 The learned Advocate appearing for the appellant/ accused has argued that the papers of indoor treatment of P.W.No.2 Shabbir Haidar (Exh.32) show that blood group of P.W.No.2 Shabbir is “B^{+ve}”, whereas C.A. Report shows existence of blood of “B” group. This submission is devoid of any substance because papers of medical treatment are not showing that blood of

injured P.W.No.2 Shabbir is that of “B” group. Papers of indoor treatment of P.W.No.2 Shabbir at Saint George Hospital shows that blood of B^{+ve} group was administered to Shabbir while his stay at the said hospital. As such, case of the prosecution cannot be doubted on this count.

14 Though there is seizure of shirt of injured P.W.No.2 Shabbir, on 30/06/2011 vide panchanama at Exh.24 i.e. after about 11 days from the incident, this cannot be a ground for disbelieving version of panch witness Hiranna Valmiki. The seizure was effected from Saint George Hospital, when injured P.W.No.2 Shabbir was undergoing medical treatment.

15 Evidence of the Investigating Officer shows that seized knife as well as shirt came to be sent for chemical analysis. Reports of chemical analysis are at Exh.28 and 29. These reports show that human blood was found on the seized knife whereas blood of B group was found on the shirt seized from the P.W.No.2 Shabbir. The scraping seized from the spot of the incident while conducting the spot panchanama was also having human blood as seen from chemical analysis report at Exh.29. Blood group of P.W.No.2 Shabbir is found to be “B” in the report of chemical analysis at Exh.28. As such forensic evidence also supports the case of the prosecution.

16 With this evidence, the prosecution has proved that the

appellant/accused had assaulted injured P.W.No.2 Shabbir Haidar by means of a knife. Now let us examine whether this offence falls under Section 307 of the IPC. It is well settled that for committing the offence punishable under Section 307 of the IPC, causing injury to the victim is not at all essential. What is material is intention coupled with an overt act. Intention of the accused can be gathered from the nature of the weapon used, part of the body chosen for inflicting the injury, as well as the force with which the blow was given. In the case in hand, evidence of P.W.No.9 Dr.Mane shows that injury was a stab injury on the right side of the chest which has not only caused fracture of 7th rib of the victim, but has also caused laceration of liver of the victim. It is seen from his evidence that because of force with which the injury was given, the blood accumulated in the cavity of the body and lung functioning came to be reduced. P.W.No.9 Dr.Mane testified that if prompt medical aid was not provided to P.W.No.2 Shabbir, he would have died within three to four hours. If all these aspects are considered, then it cannot be said that the learned trial court erred in convicting the appellant/accused of the offence punishable under Section 307 of the IPC. Therefore, I hold that the prosecution is successful in proving the offence punishable under Section 307 of the IPC.

17 Now let us examine whether the prosecution is successful in proving the offence punishable under Section 385 of

the IPC which relates to putting a person in fear of injury in order to commit extortion. In the case in hand, evidence of P.W.No.1 Ramchandra categorically shows that the appellant/accused whipped out a knife and threatened him that he would be cut into pieces if he fails to give an amount of Rs.100/- as demanded by the appellant/accused. Thereafter also when P.W.No.1 Ramchandra returned to the spot after visiting the Doctor, the appellant/accused questioned him about non-payment of Rs.100/-, taken out a knife and started chasing him. This evidence of P.W.No.1 Ramchandra Mali shows that in order to commit extortion, the appellant/accused put him in a fear of injury and as such, the offence punishable under Section 385 is made out by the prosecution.

18 The appellant/accused is also convicted of the offence punishable under Section 386 of the IPC. Section 386 of the Indian Penal Code reads thus :

386. Extortion by putting a person in fear of death or grievous hurt.—Whoever commits extortion by putting any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

19 Perusal of provisions of Section 386 of the Indian Penal

Code goes to show that this offence is made out when extortion is committed by putting any person in the fear of death or grievous hurt to that person or to any other person. The learned trial Court has observed on this aspect that the prosecution has proved that the appellant/accused had put P.W.No.1 Ramchandra Mali and P.W.No.2 Shabbir in a fear of death or of grievous hurt in order to commit extortion and further caused grievous hurt to Shabbir and, therefore, he has committed the offence punishable under Section 386 of the IPC. If we peruse evidence of the prosecution and particularly that of P.W.No.1 Ramchandra and P.W.No.2 Shabbir then it is seen that the offence of extortion was not complete. The appellant/accused had merely attempted to extort the amount of Rs.100/-. It is not in evidence of P.W.No.1 Ramchandra that he had paid some amount succumbing to the threat of the appellant/accused. In this view of the matter, the appellant/accused cannot be convicted of the offence punishable under Section 386 of the IPC. That apart, causing wound to P.W.No.2 Shabbir is not relevant in deciding the guilt of the appellant/accused for this offence.

20 The learned trial Court has also held that the appellant/accused is guilty of the offence punishable under Sections 504 and 506 of the IPC. The evidence of prosecution witnesses namely P.W.No.1 Ramchandra, P.W.No.2 Shabbir as well as P.W.No.10 Sonu Nirmal shows that the appellant/accused

had threatened P.W.No.1 Ramchandra by demanding money and had provoked him. As such provocation was likely to prompt the prosecution witnesses to breach public peace. That apart, the prosecution witnesses were criminally intimidated by the appellant/accused by his conduct as seen from the evidence of prosecution. Therefore, the learned trial Court has correctly convicted the appellant/accused for offence punishable under Sections 504 and 506 of the IPC.

21 The evidence of PW.No.1 Ramchandra Mali that the applicant/accused has slapped him on his cheek and ear is gaining corroboration of evidence of P.W.No.2 Shabbir and P.W.No.10 Sonu Nirmal. As such, the offence punishable under Section 323 of the IPC also stands proved.

22 By adducing evidence of P.W.No.4 Vilas Sawant, police constable, the prosecution has established that the order issued by the Deputy Commissioner of Police (Operation) Brihan Mumbai in the local jurisdiction of the Cuffe Parade police station was duly promulgated and the said order is at Exh.18. By this order, the Deputy Commissioner of Police (Operation) had prohibited acts of carrying arms such as swords, spears, knives, sticks etc. which are capable of using for causing physical harm from the period 25/05/2011 to 23/06/2011. This order is certainly breached by the appellant/accused by carrying the knife,

which was ultimately seized from him. In this view of the matter, no fault can be found in his conviction for the offence punishable under Section 37(i)(a) read with Section 135 of the Bombay Police Act.

23 Net result of foregoing discussion requires me to hold that the appeal deserves to be allowed partly and, therefore, the order :

- (i) The appeal is partly allowed.
- (ii) Conviction of the appellant/accused and the resultant sentence imposed on him for the offence punishable under Section 386 of the IPC is quashed and set aside.
- (iii) He is acquitted of the offence punishable under Section 386 of the IPC.
- (iv) The fine amount, if any, paid by him in respect of this offence be refunded to him.
- (v) Conviction of the appellant/accused for rest of the offences and the resultant sentences imposed on him by the learned trial Court is maintained.

24 In view of disposal of Criminal Appeal No.1094 of 2015, pending Criminal Application No.986 of 2015 stands disposed of accordingly.

(A.M.BADAR J.)