

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.723 OF 2015

PRASANJIT KRISHNA SAHIS)...APPELLANT

V/s.

**THE STATE OF MAHARASHTRA)
(U.T. OF DAMAN & DIU))...RESPONDENT**

Mr.Satyavrat Joshi, Appointed Advocate for the Appellant.

Ms.Purnima H. Kantharia, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

**DATE : RESERVED ON : 20th APRIL 2017
PRONOUNCED ON : 26th APRIL 2017**

JUDGMENT :

1 By this appeal, the appellant / accused is challenging the judgment and order dated 25th June 2013 passed by the learned Sessions Judge, Daman, in Sessions Case No.10 of 2012 thereby convicting him of the offence punishable under Section 307 of the IPC and sentencing him to suffer rigorous imprisonment for a period of 7 years apart from payment of fine of Rs.2,000/-, in default, directions to undergo further rigorous

imprisonment for a period of six months. The appeal was taken up for hearing in view of the order dated 15th September 2015 passed by this court.

2 Briefly stated, facts leading to the prosecution of the appellant / accused, according to the prosecution case, are thus :

PW1 Manu Kartikkumbar Kumbkaran is an injured informant. Appellant / accused Prasanjit Krishna Sahis and injured informant Manu Kumbkaran are from the same village. Injured informant Manu Kumbkaran was working as labour contractor at Dalwada, Nani Daman. The appellant / accused was working with him as labourer. They both used to reside in Room No.30 in the chawl owned by PW2 Navin Patel who was located at Dalwada, Nani Daman.

3 On 13th January 2012, mobile phone belonging to injured informant Manu Kumbkaran was stolen from the room. He apprehended that it was the appellant / accused who had stolen his mobile phone. There was hot exchange of words and

quarrel between both of them. Then, at about 10.30 p.m. of 13th January 2012, injured informant Manu Kumbkaran went to bed. The appellant / accused slept by his side. After sometime, the appellant / accused caught hold of him and gave blow of knife on stomach of injured informant PW1 Manu Kumbkaran. The injured informant anyhow managed to rescue himself and came out of the room. He locked the appellant / accused inside the room. He was taken to Marwad hospital by PW2 Navin Patel – landlord. The injured informant then lodged report Exhibit 6 against the appellant / accused which has resulted in registration of the offence against the appellant / accused. After initial medical treatment at Marwad hospital, injured PW1 Manu Kumbkaran was then referred to Hariya Rotary hospital at Wapi where he was treated by PW9 Dr. Suresh Sarode.

4 Pursuant to the FIR lodged by PW1 Manu Kumbkaran, routine investigation followed. From the spot of incident, sample of blood and blood stained bedsheet came to be seized. At the instance of the appellant / accused, the knife came to be seized.

Statement of witnesses came to be recorded and on completion of routine investigation, the appellant / accused came to be charge-sheeted for the offence punishable under Section 307 of the IPC.

5 After committal, the appellant / accused came to be tried before the learned Sessions Judge, Daman. In order to bring home guilt to the appellant / accused, the prosecution has examined in all ten witnesses. After hearing the parties, the learned Sessions Judge, Daman, by the impugned judgment and order dated 25th June 2013 was pleased to convict and sentence the appellant / accused as indicated in the opening paragraph of this judgment.

6 I have heard Shri Satyavrat Joshi, the learned advocate appointed at the cost of the State to represent the appellant / accused in the instant appeal. He vehemently argued that though the appellant / accused was present in the court when the evidence of PW1 Manu Kumbkaran was recorded on 20th September 2012 and 20th March 2013, PW1 Manu Kumbkaran

was not confronted with the appellant / accused as author of the injuries on him. The appellant / accused was not shown to the injured witness and therefore, identity of the accused is not established during the trial. The learned advocate further argued that PW3 Sunil Yadav had not seen anything and he had just heard that one of the roommates had assaulted PW1 Manu Kumbkaran. The weapon of the offence was not shown to PW7 Dr.Sudarshan Thakor. Evidence of PW9 Dr.Suresh Sarode does not show that the informant PW1 Manu Kumbkaran had given history of assault by the appellant / accused. According to the learned advocate for the appellant / accused, evidence of the panch witness is also not reliable.

7 I have also heard Ms.Purnima Kantharia, the learned prosecutor represent the respondent / State. She admitted that identity of the appellant / accused as author of the crime in question is established through evidence of PW2 Navin Patel. The learned prosecutor further argued that evidence on record is sufficient to convict the appellant / accused in respect of the

offence alleged against him, and therefore, the appeal deserves to be dismissed.

8 I have carefully considered the rival submissions and also perused the record and proceedings including copies of deposition of prosecution witnesses as well as the documentary evidence placed on record.

9 Considering the nature of charge leveled against the appellant / accused, evidence of injured PW1 Manu Kumbkaran is of utmost importance. He being an injured witness, his testimony carries a great weightage and as this is a case of single accused and single victim, possibility of false implication of the appellant / accused is too remote. Injured PW1 Manu Kumbkaran has stated in his evidence that appellant / accused Prasanjit was residing with him in Room No.30 of Navinbhai Chawl and on 13th January 2012, there was quarrel between both of them on the point of theft of his mobile phone. There were exchange of hot words between them and thereafter, at about 10.30 p.m., he went to bed.

Injured PW1 Manu Kumbkaran stated that the appellant / accused slept by his side. Thereafter, the appellant / accused caught hold of him while holding a knife and gave blow of that knife on his stomach. As per version of PW1 Manu Kumbkaran then he came out of the room and locked the appellant / accused inside the room. He was then carried by PW2 Navin Patel to Marwad hospital and thereafter he was referred to Hariya hospital. This witness denied the suggestion that one of the labourer working with him, with whom he had quarrel previously, had made an assault on him, but he has falsely implicated the appellant / accused in this case. This witness further denied the suggestion that the appellant / accused never committed theft of mobile phone or that he had not assaulted PW1 Manu Kumbkaran. The FIR lodged by PW1 Manu Kumbkaran is at Exhibit 6.

10 Evidence of this witness is criticized on the ground that he was not confronted with the appellant / accused who was sitting in the dock at the time of recording evidence. Therefore, in submission of the learned advocate for the appellant / accused,

identity of the appellant / accused as the assailant is not established.

11 PW2 Navin Patel is landlord of PW1 Manu Kumbkaran. This PW2 Navin Patel, owner of the chawl has categorically stated that the appellant / accused Prasanjit was residing with PW1 Manu Kumbkaran in Room No.30 of his chawl since the year 2012. PW2 Navin Patel has identified the appellant / accused as Prasanjit. This witness has stated that he had seen PW1 Manu Kumbkaran with a stab injury on his abdomen and therefore, he carried PW1 Manu Kumbkaran to Marwad Hospital, Nani Daman, by his car. Then PW1 Manu Kumbkaran was shifted to Hariya hospital at Wapi.

12 Cumulative effect of testimony of PW1 Manu Kumbkaran and PW2 Navin Patel is to the effect that the appellant / accused before the court was Prasanjit. Version of both these witnesses if read together goes to show that the appellant / accused before the court, namely, Prasanjit was residing with

PW1 Manu Kumbkaran in Room No.30 of the chawl. PW1 Manu Kumbkaran in opening portion of his chief-examination has categorically stated that the appellant / accused is Prasanjit. Thereafter, he has referred his assailant as the accused and stated that the accused had given a blow of knife on his stomach. Conjoint reading of evidence of PW1 Manu Kumbkaran and PW2 Navin Patel, as such, establishes the identity of the appellant / accused as assailant of PW1 Manu Kumbkaran, and therefore, I see no substance in the argument of learned advocate for the appellant / accused that identity of the appellant / accused as an assailant is not established by the prosecution. Infact, evidence of PW2 Navin Patel – landlord, to the effect that the accused before the court is Prasanjit and the accused was residing with PW1 Manu Kumbkaran in Room No.30 of the chawl, went unchallenged, and therefore, I hold that, with congruous evidence of PW1 Manu Kumbkaran and PW2 Navin Patel, the prosecution has established that it was the appellant / accused who had given blow of knife on stomach of PW1 Manu Kumbkaran.

13 Now let us examine whether the prosecution has made out commission of the offence punishable under Section 307 of the IPC by the appellant / accused. Soon after the incident, PW1 Manu Kumbkaran was taken to a government hospital at Marwad where PW7 Dr.Sudarshan Thakor had examined him. He noted following injuries on person of PW1 Manu Kumbkaran :

- 1) There was elliptical wound over right side of his abdomen having size of 2 inch x 1 inch.
- 2) Penetrating wounds, two in number over left internal upper arm having size 2 inch x 1 c.m.
- 3) C.L.W. over on the left side of forehead
- 4) C.L.W. on the left side of the face near cheek having size 3 c.m. x 2 c.m.
- 5) C.L.W. on left side of lower lip having 1 cm. x 1 cm.

As per version of PW7 Dr.Sudarshan Thakor, injuries found on person of PW1 Manu Kumbkaran were possible by Muddemal Article no.3 knife. This Medical Officer stated that the injured was then referred to Hariya hospital, Wapi. Evidence of this witness is corroborated by contemporaneous medical certificate which is at Exhibit 27.

14 At Hariya L.G.Rotary hospital, Wapi, PW9 Dr.Suresh Sarode had examined PW1 Manu Kumbkaran on 14th January 2012 i.e. from next day of the incident. Evidence of PW9 Dr.Suresh Sarode shows that upon examination of PW1 Manu Kumbkaran, he found following injuries on his person :

1) There was elliptical wound over right side of his abdomen paramedian in position having size of 2 inch x 1 inch peritoneum penetrated ileal loop herniating from the wound with perforation of herniated ileal loop.

2) Two penetrating wounds, over left upper arm antero-medial aspect having size of 2 inch x 1 c.m. and another 3 x 2 x 1 cm at left arm middle 1/3 at anterior aspect. Sensation was decreased at left thumb and it. Extensor movement of left wrist and was decreased because of the redial nerd injury.”

This witness further deposed that injury no.1 found on person of PW1 Manu Kumbkaran was sufficient to cause his death in the ordinary course of nature, if the same was not treated in time. PW9 Dr.Suresh Sarode further testified that injuries found on person of PW1 Manu Kumbkaran were possible by Muddemal Article no.3 knife.

15 Despite surging cross-examination of both Medical Officers by the defence, nothing could be brought on record to disbelieve their version regarding injuries suffered by the victim in the incident in question. PW1 Manu Kumbkaran had suffered elliptical wound over right side of his abdomen and the weapon of the offence was knife. Apart from this injury, he had suffered two penetrating wounds over his left arm. It is, thus, seen that, after first injury to the abdomen of PW1 Manu Kumbkaran, the appellant / accused had subsequently caused two more injuries to him by means of blows of knife. Successive blows given by the appellant / accused, weapon chosen for carrying out the assault and parts of body of PW1 Manu Kumbkaran selected for giving blows reflects intention of the appellant / accused to commit his murder. Muddemal Article no.3 knife is proved to have been seized at the instance of the appellant / accused and for this purpose, evidence of PW8 Vinod Varma – a panch witness and PW10 Manoj Patel P.S.I. is totally trustworthy and acceptable. The memorandum statement and resultant recovery panchnama of the knife at the instance of the appellant / accused are at Exhibits 30

and 31. Both Medical Officers unanimously stated that wounds found on person of appellant / accused were possible by the knife which was seized at the instance of the appellant / accused.

16 In view of foregoing reasons, I see no infirmity in the impugned judgment and order of the learned Sessions Judge, Daman, in convicting and sentencing the appellant / accused of the offence punishable under Section 307 of the IPC. As such, the following order :

The Appeal is dismissed.

(A. M. BADAR, J.)