

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.805 OF 2015**

Amit Bansi Chavan
Deepak Vitthal Chavan

...Appellants

Versus

The State of Maharashtra

...Respondents

...

Mr. Kuldeep Patil for the Appellants.
Mr. Rajan Salvi, APP for the Respondent -State.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

**JUDGMENT RESERVED ON 21/09/2017
JUDGMENT PRONOUNCED ON 13/10/2017**

JUDGMENT :-

The Appellants herein, the original accused in Sessions Case No.486 of 2009, have challenged the judgment and order dated 3rd August, 2015 whereby the learned Sessions Judge, Pune has convicted them for offences punishable under Sections 307 and 452 r/w. 34 of the IPC. The Appellants, hereinafter referred to as the accused, have been sentenced to undergo rigorous imprisonment for five years and fine of Rs.1,000/- i/d. to undergo rigorous imprisonment for one month for the offence punishable under Section 307 of IPC and to undergo rigorous imprisonment for three years with fine of Rs.1000/- i/d. RI for one month for the offence under Section 452 of the IPC.

2. The facts in brief, as are necessary to decide this appeal are as under :

On 23.5.2008 PW1 Kishor Waghmare had lodged a FIR (Exh.34) alleging that on the same date at about 1.00 p.m. both the accused with common intention trespassed into his house and attempted to cause his death by assaulting him with sickle, chopper, iron rod, etc. On the basis of the said FIR PW6-Vitthal Bhosale, who was attached to Faraskhana Police Station registered Crime No.89 of 2008 under Sections 452, 307, 323, 502 r/w. 34 of the IPC against both the accused. Upon registration of the FIR PW6 proceeded to the place of the incident and conducted the spot panchanama at Exhibit-29. He seized blood stained clothes of the injured and arrested the accused. PW6 recorded the statements of the witnesses and forwarded all the seized material to Chemical Analysis. The injured were treated in Sasoon General Hospital. He obtained injury certificate at Exhibit-38 from the Medical Officer of the Sasoon General Hospital. Upon completion of the investigation, he filed a charge sheet against both the accused for the aforesaid offences.

3. On committal of the case to the Court of Sessions, the

learned Sessions Judge, framed charged (Exhibit-7) against the accused for offences punishable under sections 307 and 452 r/w 34 of the IPC. The accused pleaded not guilty and came to be tried. The prosecution in support of its case examined 6 witnesses. Statements of the accused were recorded under Section 313 of the Cr.P.C. The defence of the accused was that of total denial. The learned Sessions Judge upon appreciation of the evidence held the accused guilty the offences under Sections 307 and 452 r/w. 34 of the IPC and sentenced them as stated above. Being aggrieved by the said conviction and sentence, the accused have preferred this appeal.

4. Mr. Kuldeep Patil, the learned counsel for the accused has submitted that the evidence on record does not prove that the accused had inflicted any such injury on PW1, which was likely to cause his death. He has submitted that there is absolutely no evidence on record to prove that the accused had committed any such act from which it can be gathered that they had an intention of committing murder of PW1.

5. Mr. Rajan Salvi, the learned APP has submitted that the accused had assaulted PW1 with deadly weapons. He has submitted

that in order to attract 307, it is not necessary that bodily injury capable of causing death should have been inflicted. In support of this contention he has relied upon the decision of the Apex Court in *State of Maharashtra Vs. Balram Bama Patil AIR 1983 SC 305*.

6. I have perused the records and considered the submissions advanced by the learned counsels for the respective parties.

7. The case of the prosecution mainly rests on the testimony of the injured witness-PW1 Kishore Waghmare, his brother PW2 Prashant Waghmare and his wife PW3-Rupali Kishore Waghmare. In order to effectively deal with the submissions advanced by the learned counsels for the accused and the learned APP, it would be useful to refer to the evidence of these three witnesses.

8. PW1-Kishore Waghmare deposed that on the relevant date when he reached home he saw that the accused had assaulted his brother Prashant Waghmare. He has stated that accused No.2-Deepak was armed with a steel pipe and the accused No.1-Amit was armed with a chopper. He has stated that on seeing him, both the accused started assaulting him. The accused No.2-Deepak gave a blow with

steel pipe on his leg and the accused No.1- Amit attacked him with a chopper on his head. He has deposed that the police had come to the hospital and recorded the FIR at Exhibit- 34. In his cross-examination he has stated that many people from the locality had gathered at the spot. He has further stated that he was unconscious and was admitted in Sasoon Hospital for one week. He has further stated that his brother Prashant was also admitted in the Hospital for one month. He has stated that he and Prashant reside in the same locality and the house of Prashant is at a distance of 100 feet away from his house. He has denied that PW2-Prashant had enticed Sarika, the sister-in-law to accused No.2-Deepak and that said Sarika and her children were living with Prashant. He has admitted that prior to the incident the brother of the accused No.1 had assaulted Prashant and that the said incident had led to registration of crime against Prashant as well as the brother of the accused No.1.

9. PW2 Prashant claims that on 23.5.2008 at about 1.00 p.m. both the accused entered his house. The accused No.1 Amit questioned him as to why he had falsely implicated Pritam in a criminal case and further threatened to cause his death. PW2 has stated that the accused No.1 -Amit thereafter inflicted blows of chopper on his head

and leg. The accused No.2-Deepak also gave a blows of steel pipe on his head, hands and legs. In the meantime his brother PW1 arrived at the place of the incident and that both the accused attempted to cause his death by assaulted him with chopper and steel Pipe. He has further stated that he was treated in the Sasoon Hospital for 17 days. In his cross examination he has stated that Sarika is the sister in law of the accused No.2- Deepak. He has stated that the accused No.2-Deepak, his brother Raju and Sarika were residing in the said locality. He has denied the suggestion that after the death of Raju he was having illicit relations with Sarika. He has admitted that said Sarika and her two children are living with him since over four years. He has stated that he and Sarika are living as husband and wife. He has admitted that prior to this incident there was quarrel between him and the Pritam, brother of accused No.1-Amit and that offence is registered against both of them. He has denied the suggestion that his relations with the accused have been strained because of his love affair with Sarika.

10. PW3-Rupali is the wife of PW1- Kishore. She has deposed that on 23.5.2008 at about 1.00 p.m. both the accused entered her house and assaulted her brother in law -PW2 Prashant because of some previous enmity. She has stated that the accused No.1 was armed with

chopped and that the accused No.2 was armed with a pipe and that both the accused inflicted blows of iron pipe and chopper on head, neck, back, hands and legs of Prashant. In the meantime her husband PW1-Kishor entered the house and that the accused also assaulted him. In her cross examination, she has stated that Prashant resides separately and that his hut is situated towards the rear side of her hut. She has admitted that PW2-Prashant lives with Sarika and her children and that the relations between Prashant and the accused are strained because PW2 is living with Sarika, who is the sister-in-law of the accused No.2.

11. Pw3 has stated in her cross-examination that the entire incident had lasted for about half an hour and that about 30 to 40 persons had gathered at the place of the incident. She has deposed that Kishore and Prashant had sustained injuries. Prashant was unconscious and the people from the locality had taken him to the hospital. He was admitted in the hospital for about 8 to 10 days. Her husband Kishore was not admitted in the Hospital and that he was discharged after giving first aid.

12. The evidence of these witnesses indicates that there was

enmity between the accused and victims as the accused believed that PW2-Prashant was having illicit relations with Sarika, the sister in law of the accused No.2-Deepak. This had led to a quarrel between PW2-Prashant and Pritam, the brother of the accused No.2 and consequent registration of crimes against both. According to PW2-Prashant, the incident in question was a consequence of registration of crime against Pritam. The evidence of these three witnesses indicates that both the accused had entered their house armed with chopper and pipe and inflicted injuries on PW1 and PW2. According to PW1 the accused No.1-Amit had given one blow of chopper on his head and the accused No.2-Deepak had given a blow of steel pipe on his leg. PW2 has stated that both the accused had assaulted PW1-Kishor by Chopper and Steel Pipe, without giving any further details of the assault. Whereas PW3 has merely stated that the accused had assaulted her husband. The evidence of PW2 and PW3 does not indicate that the accused had inflicted injuries on the vital parts of the body of PW1. They are also silent on the number of blows given by the accused.

13. It is pertinent to note that PW1 claims that as a result of the assault he had become unconscious and was shifted to the hospital in unconscious state. He has stated that he was admitted in the

hospital for one week and that his brother PW2 Prashant was admitted in the hospital for about one month. PW2 claims that the testimony of PW2 does not indicate that either he or PW1 Kishore had become unconscious as a result of the incident. PW2 has stated that he was admitted in the hospital for about 17 days. PW3 has given a different version. She has deposed that her husband was not unconscious and that he was not admitted in the hospital. She has stated that her husband was discharged after giving first aid. She claims that her brother-in-law Prashant was unconscious and that he was admitted in the hospital for about 8 to 10 days. A close look at the evidence of these three witnesses clearly indicates that the witnesses are at variance as to the exact incident as well as the nature of treatment.

14. It is also pertinent to note that the prosecution, for the reasons best known, has not examined the medical officer who had treated PW1 and PW2. The prosecution has also not adduced any evidence to prove that these two witnesses were in fact admitted and treated in Sasoon Hospital.

15. In *Balram Patil*, supra the incident was between a group of two political parties. About 50 to 60 persons belonging to one of the

political parties, had caused bodily injuries to the members of the other political party by means of guns, axes and sticks. One of the persons, who was assaulted with an axe had died at the spot. The Sessions Court had convicted some of the accused for offence under section 307 of the IPC. The High Court had set aside the said conviction under Section 307 mainly on the ground that injuries inflicted on the witnesses were in the nature of simple hurt. While setting aside the said part of the judgment the Apex Court held thus :-

“9.xxx

To justify a conviction under this section it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the

culprit would be liable under this section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the Court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in this section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.”

16. The facts of the present case are totally distinguishable. In the instant case, apart from the fact that there is absolutely no evidence to prove that PW1 and PW2 had in fact sustained any grievous or fatal injuries on the vital part of their body, there are no other surrounding circumstances from which the intention of the accused to cause death of PW1 Prashant can be gathered. It is to be noted that the evidence of the injured and the eye witness is at variance as regards the actual incident, the number of blows and the nature of the injuries. Though the accused are alleged to have inflicted injuries with chopper and

pipe, there is no evidence on record to indicate that the said chopper and pipe were stained with blood. In fact, though the Investigating Officer had stated that he had forwarded the seized material to the CA the prosecution for the reasons best known has not produced the CA report.

17. Considering all the above factors, in my considered view the prosecution has failed to establish the guilt of the accused beyond reasonable doubt. Hence, the conviction of the accused under Sections 307 and 452 of the IPC cannot be sustained. Hence, the following order:-

- (I) The appeal is allowed.
- (II) The impugned judgment and order dated 3rd August, 2015 in Sessions Case No. 486 of 2009 passed by the District Judge-13 and Additional Sessions Judge, Pune, is quashed and set aside.
- (III) The accused are acquitted of the offences punishable under Sections 307 and 452 r/w. 34 of the IPC.
- (IV) The accused shall be released forthwith, if not required in any other crime.

(SMT. ANUJA PRABHUDESSAI, J.)