

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPEAL NO.772 OF 2015
WITH
CRIMINAL APPLICATION NO.1178 OF 2016
AND
CRIMINAL APPLICATION NO.1433 OF 2016
AND
CRIMINAL APPLICATION NO.1389 OF 2017
AND
CRIMINAL APPLICATION NO.8 OF 2018
IN
CRIMINAL APPEAL NO.772 OF 2015**

BABU LAXMAN KALEMULE)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mrs N.S.K. Ayubi, Appointed Advocate for the Appellant.

Ms. Anamika Malhotra, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 23rd APRIL 2018

ORAL JUDGMENT :

1 By this appeal, the appellant/accused is challenging the judgment and order dated 26th September 2014 passed by the

learned Additional Sessions Judge, Greater Mumbai, in Sessions Case Nos.354 of 2012 and 458 of 2012, thereby convicting him of the offence punishable under Section 307 read with 34 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for 7 years.

2 Facts, in brief, leading to the prosecution of the appellant/accused can be summarized thus :

- (a) PW1 Prabhu Sankole is the alleged victim of the crime in question. He along with his family, which is also comprising of his father Ussappa were residing at Jai Ambe Nagar Slum Area, Chembur, Mumbai. Accused persons also used to reside in the same area. Ussappa Sankole – father of injured PW1 Prabhu Sankole was leader of the community. Accused persons used to accuse Ussappa that he has misappropriated the funds of the community and they were trying to create their own influence in the society.

- (b) The incident in question took place on 12th January 2012. At about 7.00 p.m. of that day, accused persons gathered in front of house of injured PW1 Prabhu Sankole and started abusing his father Ussappa Sankole for no reason. Ussappa Sankole requested them to leave that place. However, the accused persons started abusing the family members of PW1 Prabhu Sankole. Appellant/accused no.1 then provoked the co-accused by stating that family members of injured PW1 Prabhu Sankole are required to teach a lesson. Accused no.3 then gave a blow of fist on face of PW1 Prabhu Sankole. Thereafter, absconding accused Karappa and accused no.2 Mogallappa caught hold of injured PW1 Prabhu Sankole in order to immobilize him. Then, appellant/accused no.1 Babu Kalemule gave successive blows of knife on person of injured PW1 Prabhu Sankole causing bleeding injuries to him. Subsequently, PW1 Prabhu Sankole was assaulted by means of fist and kick blows.

- (c) With the help of PW3 Sunil Navkar, Ussappa Sankole and others took injured PW1 Prabhu Sankole to Rajawadi Hospital for medical treatment. At the said hospital, PW1 Prabhu Sankole lodged the First Information Report (FIR) Exhibit 30, which came to be recorded by PW5 Ramesh Ghuge, Station House Officer. Accordingly, Crime No.7 of 2012 for the offence punishable under Section 307 read with 34 of the Indian Penal Code came to be registered against the accused persons with Police Station Tilak Nagar.
- (d) During the course of investigation, clothes of injured PW1 Prabhu Sankole came to be seized vide Seizure Panchnama Exhibit 32. The spot came to be inspected and Spot Panchnama Exhibit 31 came to be prepared. Accused persons were arrested. On the basis of voluntary disclosure statement of appellant/accused no.1 Babu Kalemule, a blood stained knife came to be seized. On completion of investigation, the charge-sheet came to be filed against the accused persons.

- (e) The Charge for offences punishable under Sections 307 and 324 read with 34 of the Indian Penal Code as well as under Section 37(1)(A) read with 135 of the then Bombay Police Act came to be framed against the appellant and accused persons. They abjured guilt and claimed trial.
- (f) In order to bring home the guilt to the appellant/accused, the prosecution has examined in all seven witnesses. Injured Prabhu Sankole is examined as PW1 whereas the report lodged by him on 12th January 2012 is at Exhibit 30. Eye witness named Radhabai Katamche is examined as PW2. Sunil Navkar is examined as PW3. Manoj Awasthi – panch witness to the disclosure statement and the resultant Recovery Panchnama is examined as PW4. He, however, did not support the prosecution. Ramesh Ghuge, Station House Officer, is examined as PW5. Exhibit 32 is the Seizure Panchnama of clothes of injured PW1 Prabhu Sankole. Exhibit 31 is the Spot Panchnama. Dr. Ankur Karanjkar,

Medical Officer, working with Rajawadi Hospital, Mumbai, is examined as PW6. Exhibit 45 is the Medico Legal Certificate issued by the said witness along with papers of medical treatment of the injured. Sachin Sandbhor, Police Inspector, attached to Tilak Nagar Police Station, is examined as PW7. Exhibit 49 is the Voluntary Disclosure Statement of the appellant/accused and Exhibit 49A is the resultant Recovery Panchnama of the knife. Exhibit 33 is the Report of the Chemical Analyser of seized articles. The defence of the appellant/accused was that of total denial.

- (g) After hearing the parties, by the impugned judgment and order dated 26th September 2014, the learned trial court was pleased to convict the appellant/accused Babu Kalemule along with co-accused Mogallappa Komadi for the offence punishable under Section 307 read with 34 of the Indian Penal Code whereas accused no.3 Shivaji Kalemulle came to be convicted of the offence punishable under Section 323 read with 34 of the Indian Penal Code. All accused persons

are acquitted of rest of the offences alleged against them. The appellant/accused Babu Kalemule was sentenced to suffer rigorous imprisonment for 7 years for the said offence of which he is convicted.

3 I have heard Ms.Nasreen Ayubi, the learned appointed advocate, at the cost of the State to represent the appellant/accused no.1 Babu Kalemule. The learned advocate criticized the evidence of injured PW1 Prabhu Sankole by arguing that this witness is not reliable and he has motive to falsely implicate the appellant/accused no.1 Babu Kalemule in the crime in question. Evidence of this witness shows that there was dispute between his family and the accused persons over supremacy in the community and therefore, the appellant/accused is falsely implicated in the crime in question by this witness. The learned advocate argued that PW1 Prabhu Sankole in his evidence has stated that it was the accused no.3 Shivaji, who had grudge against PW1 Prabhu Sankole and therefore, there was no reason for appellant/accused no.1 Babu Kalemule to assault PW1 Prabhu Sankole by means of a

knife. The learned advocate further argued that the incident was witnessed by so many persons of the locality as per the case of the prosecution, but no eye witness except PW2 Radhabai Katamche is examined by the prosecution in order to establish the guilt of the appellant/accused. Therefore, evidence of injured witness PW1 needs to be discarded and the appellant/accused be granted benefit of doubt.

4 The learned APP supported the impugned judgment and order of conviction by contending that PW1 Prabhu Sankole is an injured witness and his testimony is reliable. His evidence cannot be discarded in the light of judgment of the Honourable Apex Court in the matter of **Shivalingappa Kallayanappa vs. State of Karnataka**¹. The learned APP by relying on the judgment of the Madhya Pradesh High Court in the matter of **Guddu alias Sameer vs. State of Madhya Pradesh**² argued that the prosecution has made out the offence punishable under Section 307 read with 34 of the Indian Penal Code as injuries

1 1994 Supp(3) SCC 235

2 2012 CRI.L.J. 3866

caused to PW1 Prabhu Sankole were by means of forceful blows of knife causing laceration of the kidney. The overt act coupled with intention is, as such, made out by the prosecution.

5 I have carefully considered the rival submissions and also perused the Record and Proceedings including the deposition of prosecution witnesses as well as the documentary evidence adduced by the prosecution. The case in hand is a case of assault by means of knife on injured PW1 Prabhu Sankole by accused persons. Principles of appreciation of evidence of the injured witness can be found in the judgment of the Honourable Apex Court in the matter of Shivalingappa supra as well as State of Uttar Pradesh vs. Kishan Chand³. It is well settled that deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies. The fact that the witness sustained injuries at the time and place of the incident lends support to his testimony that he was present during the occurrence. In the natural course, such injured witness does not

3 2004 (7) SCC 629

spare the real culprit and rope in an innocent. Let us, therefore, examine what PW1 Prabhu Sankole has stated in his evidence. In tune with prosecution case, injured PW1 Prabhu Sankole has stated that he belongs to Puriyajang community and his father, at the relevant time, was leading the community. Accused no.3 Shivaji Kalemule was aggrieved by this fact. Similarly, appellant/accused Babu Kalemule and his father were also picking up quarrels with his father in order to make father of appellant/accused Babu Kalemule as leader of this community. PW1 Prabhu Sankole testified that on 12th January 2012, when he was standing in front of his house at about 7.00 p.m., appellant/accused no.1 Babu Kalemule along with accused no.2 Mogallappa, accused no.3 Shivaji and absconding accused Karappa came there and started abusing his father and sister in filthy language. He, therefore, tried to pacify the accused persons. His father also tried to stop the accused persons from abusing them. At that time, as per version of injured PW1 Prabhu Sankole, the appellant/accused no.1 Babu Kalemule uttered that injured PW1 Prabhu Sankole and his family members need to be

taught a lesson. Then accused no.3 Shivaji gave a fist blow on face of PW1 Prabhu Sankole. As stated by injured PW1 Prabhu Sankole, then he was held by absconding accused Karappa and accused no.2 Mogallappa, and thereupon, appellant/accused no.1 Babu Kalemule stabbed him by knife on his back as well as chest and abdomen. He was, then, thrown on the ground and all accused persons thereafter, assaulted him by means of fist and kick blows.

6 As per version of injured PW1 Prabhu Sankole, he was then taken to Rajawadi Hospital, where he lodged report Exhibit 30. As per his version, at the time of adducing evidence, he was suffering from acute pain because of assault on him. This witness identified the accused persons, so also his seized clothes.

7 In cross-examination of this witness, it has been brought on record that in respect of earlier incident of dispute, he did not lodge any complaint against accused persons with the police station. He denied that he is addicted to drugs and liquor

and had consumed Tadi. He further denied that under intoxication he suffered a fall on the tin sheet causing injuries to him.

8 Over all scrutiny of evidence of PW1 Prabhu Sankole, which is fully corroborated by FIR Exhibit 30 lodged with promptitude by him, goes to show that at the time of the incident, he was immobilized by accused persons and appellant/accused no.1 Babu Kalemule then assaulted him by means of a knife, by giving blows on him at the back and abdomen. Perusal of Spot Panchnama Exhibit 31 does not show that there were tin sheets at the spot of the incident probalizing the defence that injured PW1 Prabhu Sankole had suffered bleeding injuries because of his fall on tin sheets under intoxication. He was immediately examined by PW6 Dr.Ankur Karanjkar at Rajawadi Hospital after sustaining injuries. There are no suggestions to PW6 Dr.Ankur Karanjkar that the injuries found on the person of PW1 Prabhu Sankole were possible because of fall of a person in the state of intoxication on tin sheets. In the light of this fact situation

emerging on record, it is not possible to hold that injuries sustained by PW1 Prabhu Sankole were accidental in nature or that the appellant/accused was not the author of that injuries.

9 PW2 Radhabai Katamche is a resident of Jai Ambe Slum and neighbour of PW1 Prabhu Sankole. She has also deposed that on 12th January 2012, she saw accused no.3 Shivaji quarreling with PW1 Prabhu Sankole and then in the course of that quarrel, absconding accused Karappa and accused no.2 Mogallappa caught hold of PW1 Prabhu Sankole and then appellant/accused no.1 Babu Kalemule assaulted PW1 Prabhu Sankole with a knife on back as well as abdomen. This witness has duly identified appellant/accused no.1 Babu Kalemule while in the witness box. From her cross-examination it is brought on record that she is a distant relative of PW1 Prabhu Sankole. However, her evidence that she had seen the incident of assault is not at all challenged in her cross-examination. Only because this witness is a distant relative of PW1 Prabhu Sankole, her evidence cannot be discarded. On the contrary, there seems to be no reason

to disbelieve her unchallenged evidence in respect of the incident of assault on PW1 Prabhu Sankole by the appellant/accused.

10 Evidence of PW3 Sunil Navkar shows that he had seen PW1 Prabhu Sankole bleeding from injuries on his stomach and therefore, this witness had helped father of PW1 Prabhu Sankole in taking him to Rajawadi Hospital. This evidence of PW3 Sunil Navkar shows that he had seen PW1 Prabhu Sankole with bleeding injuries on 12th January 2012 and this evidence, therefore, corroborates the version of injured PW1 Prabhu Sankole. PW7 Sachin Sandhbhor is the Police Inspector of Tilak Nagar Police Station. His evidence shows that during the course of investigation, appellant/accused no.1 Babu Kalemule made a disclosure statement expressing his willingness to produce the weapon on 14th January 2012. PW7 Sachin Sandhbhor, Police Inspector, deposed that he recorded the statement Exhibit 49 of appellant/accused no.1 Babu Kalemule in presence of two panch witnesses and thereafter, the appellant/accused led him as well as panchas to his house and produced knife from the hollow bamboo

of the roof, where it was concealed. As per version of PW7 Sachin Sandhbhor, Police Inspector, he then seized that knife by preparing panchnama Exhibit 49A.

11 PW4 Manoj Awasthi was the panch, in whose presence the appellant/accused no.1 Babu Kalemule had made a disclosure statement and recovery of knife was effected. This witness has turned hostile to the prosecution but there is reliable evidence of the Investigating Officer for proving the disclosure statement and the resultant recovery. Cross-examination of PW7 Sachin Sandhbhor, Police Inspector, could not bring on record any material to disbelieve his version regarding recovery at the instance of appellant/accused no.1 Babu Kalemule.

12 PW5 Ramesh Ghuge, Station House Officer, had seized clothes of injured PW1 Prabhu Sankole. Seized clothes along with knife seized at the instance of appellant/accused no.1 Babu Kalemule, were sent for chemical analysis. Chemical Analyser's Report at Exhibit 33 shows that clothes seized from PW1 Prabhu

Sankole were stained with his blood which is of “O” group. Similarly, knife seized at the instance of appellant/accused no.1 Babu Kalemule was also having stains of human blood. Thus, this forensic evidence incriminates the appellant/accused in the crime in question. Recovery of knife, which is proved to be used for commission of the crime in question, becomes the relevant fact, which shows complicity of the appellant/accused no.1 Babu Kalemule in the crime in question.

13 With this evidence, it needs to be held that appellant/accused no.1 Babu Kalemule, in furtherance of his common intention with other accused, had assaulted PW1 Prabhu Sankole by means of a knife.

14 Now let us examine whether by this act of assault on injured PW1 Prabhu Sankole, the appellant/accused has committed the offence punishable under Section 307 of the Indian Penal Code.

15 PW6 Dr.Ankur Karanjkar is an expert witness, who at the relevant time was working as Medical Officer with Rajawadi Hospital, where injured PW1 Prabhu Sankole was admitted for medical treatment after the incident. This expert witness has deposed on the basis of record of medical treatment of injured PW1 Prabhu Sankole. Evidence of PW6 Dr.Ankur Karanjkar shows that injured PW1 Prabhu Sankole had suffered following injuries :

- i) Incised lacerated wound adm. 3 x 2 x 0.3 cms in left lumbar region.
- ii) Incised lacerated wound adm. 1 x 0.3 x 0.3 cms over anterior abdominal wall.

Injured PW1 Prabhu Sankole, as seen from version of PW6 Dr.Ankur Karanjkar, was subjected to City Scan and report of City Scan of injured PW1 Prabhu Sankole was indicating haematoma at juncture of mid-pole and lower pole of left kidney with laceration of PCS to cortex with free contrast leak. This injury required performance of Uro surgery on injured PW1 Prabhu Sankole. After perusing the papers of medical treatment of

injured PW1 Prabhu Sankole, PW6 Dr.Ankur Karanjkar deposed that injuries suffered by PW1 Prabhu Sankole, if had not been treated immediately, would have been sufficient in the normal course of nature to cause his death. There is no reason to discard this opinion of the expert witness in the field of medical science.

16 Offence punishable under Section 307 of the Indian Penal Code is made out when it is proved that an accused committed an act with such intention or knowledge and under such circumstances, that if by that act he had caused death, he would be guilty of murder. In the case in hand, appellant/accused no.1 Babu Kalemule is proved to have assaulted injured PW1 Prabhu Sankole by means of a knife causing bleeding injuries to his vital part. It is also proved from evidence of PW1 Prabhu Sankole and PW2 Radhabai Katamche that those were the accused persons, who had been to the house of injured PW1 Prabhu Sankole to pick up quarrel with him as well as his family members. Initially, they started abusing the members of the prosecuting party and then appellant/accused no.1 Babu Kalemule

uttered that members of the prosecuting party need to be taught a lesson and that is how assault on PW1 Prabhu Sankole was started, in the course of which, by immobilizing him, he was given blows of knife. Thus, it cannot be said that the assault on PW1 Prabhu Sankole was in a sudden fight, in the heat of passion upon a sudden quarrel. On the contrary, the fight was at the instance of appellant/accused no.1 Babu Kalemule, and that too, without any provocation by other members of the prosecuting party or PW1 Prabhu Sankole. The same was over supremacy in the community and to show dominance. Thus, in this situation, if death of injured PW1 Prabhu Sankole was caused, then the offence would have been certainly be that of murder punishable under Section 302 of the Indian Penal Code. The seat of injury and choice of weapon as well as the force of blow reflected from the medical evidence constitute necessary intention as well as knowledge of appellant/accused no.1 Babu Kalemule in assaulting the injured PW1 Prabhu Sankole. Therefore, the prosecution has successfully established the offence punishable under Section 307 of the Indian Penal Code.

17 The learned trial court has appropriately sentenced
appellant/accused no.1 Babu Kalemule and the quantum of
sentence is commensurate with the gravity of the offence.

18 In the result, the appeal is devoid of merits, and
therefore the order :

ORDER

- i) The appeal is dismissed.
- ii) In view of disposal of appeal of appellant/accused no.1 Babu
Kalemule, Criminal Applications Nos.1178 of 2016, 1433 of
2016, 1389 of 2017 and 8 of 2018 filed by
appellant/accused no.1 Babu Kalemule also stand disposed
of.

(A. M. BADAR, J.)