

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 720 OF 1997***

Bhimi Gandayya Padamshali	)	
at present at Yerawada Central Prison	)	
Pune.	)	Appellant
Versus		
The State of Maharashtra	)	
at the instance of Dadar Police Station	)	Respondent

Mr.Swapnil Ovalekar, for the appellant.
Mr.Ajay Patil,APP, for the State.

***CORAM : SMT. SADHANA S.JADHAV, J.
DATE : 28th February, 2018.***

ORAL JUDGMENT:

1. On 2.6.2017, none appeared for the appellant and the matter was placed on the Final Hearing Board. On 30.11.2017, none appeared for the appellant and, therefore, this Court was pleased to appoint Advocate Mrs. Nasreen Ayubi, who is on the panel of Maharashtra State Legal Aid Services Authority, to espouse the cause of the appellant. On 15.1.2018, none appeared for the appellant.
2. Today, Ms. Ayubi is not present. Hence, this Court had requested Advocate Mr. Swapnil Ovalekar to espouse the cause of the

appellant. He has graciously accepted to plead on behalf of the appellant. On a short notice, he has gone through the record and has advanced submissions on facts and law.

3. It is reported that the appellant herein, who happens to be original accused No.2 in Sessions Case No. 1366 of 1993, has undergone the sentence imposed upon him. The appellant herein is convicted (i) for the offence punishable under Section 452 read with Section 34 of the Indian Penal Code and sentenced to R.I. for four years and to pay fine of Rs.500/- in default R.I. for 3 months, (ii) for the offence punishable under Section 393 read with Section 34 of IPC and sentenced to 4 years and to pay fine of Rs.500/- in default R.I. for 3 months. (iii) for the offence punishable under Section 398 read with section 393 of IPC and sentenced to R.I. for 7 years, (iv) for the offence punishable under Section 394 read with Section 34 of the Indian Penal Code and sentenced to R.I. for 4 years and to pay fine of Rs.500/- in default R.I. for six months and under Section 506(II) read with Section 34 of IPC and sentenced to under R.I. for 4 years in Sessions Case No.680 of 1992 vide judgment an order dated 6.11.1996. The appellant was arrested on 14.8.1993. The date of application is 6.11.1996. By an order dated 19.12.1997, the substantive sentence was

suspended and the appellant was enlarged on bail. It appears from the record that the appellant could not furnish bail and he has been released on bail on 21.8.1999 after completion of the substantive sentence along with the default sentence.

4. Such of the facts necessary for the decision of this appeal are as follows :-

(i) The appellant herein is staying in Janata Colony, Worli, Koliwada. On 26.3.1993, Omprakash Ramdubar Upadhyay lodged a report at the police station alleging therein that on that day, the original accused Nos.1 and 2 entered in their house along with an unknown person. The present appellant was armed with a knife and the other accused were holding soda-water bottles in their hands. The appellant was brandishing his knife. He demanded Rs.5,000/- from the complainant. The complainant had begged sympathy and had disclosed that he would not be able to pay Rs.5,000/-. Thereafter, the appellant had threatened him with dire consequences and did not pay any heed to the complainant. The neighbours i.e. Shakuntala and Ram Nivas had reached on the spot. The accused No.1 had assaulted the complainant with fist and kick blows. They had started pelting soda water bottles and in the said incident, one Mr. Keny was

injured. The appellant continued to threaten the people from the said locality and, therefore, they were constrained to close their doors and windows and remained indoors. Thereafter the injured were taken to the hospital and the complainant had lodged a report with the police station for the offences punishable under Sections 452, 393, 394, 398, 506(II) , 327 read with section 34 of the Indian Penal Code. The appellant was arrested. After completion of investigation, charge sheet was filed on 7.10.1993 and the case was committed to the Court of Sessions on 5.11.1993.

5. The prosecution examined as many as five witnesses to bring home the guilt of the accused. The prosecution witness Nos. 2 and 3, who are the eye-witnesses to the incident, have specifically stated that the accused were residing in the same locality and had entered in their house while the complainant's family was having dinner. That they were brandishing the weapons and had demanded Rs.5,000/-. The complainant and others were assaulted. The substantive sentence of the complainant is inconsonance with the contents in the FIR which is at Exhibit 9.

6. It appears from the record that the evidence in the examination-in-chief is not challenged in the cross-examination and there is no doubt to suspect the truthfulness in the evidence of PW-2. The

prosecution has also placed implicit reliance upon the testimony of PW-2, who happens to be the brother of the complainant and he was present in the house since they were all having dinner. The complainant and his family members were being coerced to part with Rs.5,000/- in favour of the accused persons and they were being threatened on the point of knife. The accused were residing in the same locality and, therefore, there is no question of mistaken identity. Hence, it was not necessary to conduct the test identification parade in the course of investigation. The prosecution has also examined Dr. Kamini Kambli PW-4 and Dr. Anand Parab PW-1 who has deposed before the Court that they had examined the complainant and Mr. Keny on the day of the incident and had found injuries on their person. The injuries sustained by PW-2 are incised wounds on left fore-arm and left little finger as well as incised wounds on the right hand as has been substantiated by PW-1. PW-1 has also brought before the Court the Casualty Register No.86. The examination of the witness is at Sr.No.4174 which is marked at Exhibit 7. The learned Sessions Court has rightly held that the said register is a reliable document and that injuries mentioned by PW-1 fully corroborate with the injuries mentioned by PW-2. PW-4 was a doctor attached to the K.E.M. Hospital as a Chief Medical Officer. On

27.3.1993, she had examined one Mr. Keni and had noticed contused lacerated wound on the occipital region and the second injury was the minor abrasion.

7. The accused persons have been identified in the Court. Needless to say that identification in the Court is a substantive evidence. There is nothing in the cross-examination to hold that the testimony of the eye-witnesses has been shattered.

8. The learned Advocate appointed for the appellant vehemently submits that the prosecution has not examined independent witnesses although the scene of offence i.e. the house of the complainant is on a busy road where there is heavy traffic and, therefore, it appears that in the absence of the testimony of any independent witness, the appellant has been falsely implicated. However, the said submission will hold no ground as it is specifically the case of the prosecution that upon seeing the appellant brandishing a knife and accompanied by persons who were carrying soda-water bottles and pelting the same at the witnesses, they did not dare to intervene and had retired indoors and closed their doors and windows. The incident had occurred in the house of the complainant and, therefore, the testimony of an independent witness would not be necessary.

9. Upon perusal of the material collected in the course of investigation and the substantive evidence adduced at the time of trial, this Court is of the opinion that findings recorded by the learned Addl. Sessions Judge, Greater Bombay in the judgment and order dated 6.11.1996 do not call for any interference. The appeal stands dismissed. The conviction is upheld and, in any case, the appellant has undergone the sentence imposed upon him and therefore it is not necessary to record a finding in respect of the order passed in the said judgment.

10. Advocate (appointed) Mr. Ovalekar has espoused the cause of the appellant to the best of his ability and has also assisted the Court. Hence, his professional fees are quantified at Rs.1,500/- to be paid to him within three months from today.

(SMT. SADHANA S.JADHAV, J.)