

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.284 OF 2012

ALONG WITH

CRIMINAL APPLICATION NO.384 OF 2018

ALONG WITH

CRIMINAL APPLICATION NO.552 OF 2018

Amit Ramesh Shitole.	]	
Aged 19 years, Occ. - Business,	]	
Residing at - Sopannagar, Galli No.3,	]	
Vadgaon-Sheri, Pune-14.	]	... Appellant /
		Orig.Accd.No.1

Versus

The State of Maharashtra.	]	
(At the instance of Yerawada Police Station).	]	... Respondent

ALONG WITH

CRIMINAL APPEAL NO.325 OF 2012

Santosh Chandrahas Thakur.	]	
Aged 19 years, Occ. - Business,	]	
Residing at - Saikripa Society, Somnath Nagar,	]	
Vadgaon-Sheri, Pune-14.	]	... Appellant /
		Orig.Accd.No.2

Versus

The State of Maharashtra.	]	
(At the instance of Yerawada Police Station).	]	... Respondent

Mr. Satyavrat Joshi a/w Mr. Vipul Dushing & Mr. Sumant Deshpande
for Appellant in Criminal Appeal No.284 of 2012.

None for Appellant in Criminal Appeal No.325 of 2012.

Mr. H. J. Dedhia, APP for State in both Appeals.

CORAM :- B. R. GAVAI &
SARANG V. KOTWAL, JJ.
DATE :- 09 JULY, 2018

JUDGMENT (PER : SARANG V. KOTWAL, J.) :-

1. Both these Appeals are challenging the same impugned Judgment and Order dated 27/01/2017 passed by the learned Additional Sessions Judge, Pune, in Sessions Case No.391 of 2008. Therefore, both these Appeals are disposed of by this common Judgment and Order. Appeal No.284 of 2012 is preferred by the accused no.1 and Appeal No.325 of 2012 is preferred by the accused no.2 in Sessions Case No.391 of 2008. For the sake of convenience, these Appellants are referred hereinafter by their status as the accused nos.1 and 2 in the said sessions case.

2. By the impugned Judgment and Order, the accused no.1 was convicted for the offence punishable under Section 302 of the IPC and was sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs.5,000/- and in default of payment of fine, to suffer R.I. for one year. The accused no.2 was convicted for the offence punishable under Section 307 of the IPC and was sentenced to suffer rigorous imprisonment for ten years and to pay a fine of Rs.5,000/- and in

default of payment of fine, to suffer R.I. for one year. The first clause of the operative order mentions that the accused nos.1 and 2 were found guilty under Section 235(2) of Cr.P.C. for the offence punishable under Sections 302 and 307 of the IPC respectively. At the same time, clause 4 of the operative part mentions that the accused nos.1 and 2 were not found guilty of the offences punishable under Sections 302 and 307 of the IPC respectively and they were acquitted of the said offences. We are unable to understand clause numbers 1 and 4 and their effect. Be that as it may, the operative order, if read as a whole, indicates that the accused no.1 was convicted for the offence punishable under Section 302 of the IPC and the accused no.2 was convicted for the offence punishable under Section 307 of the IPC and were sentenced as mentioned earlier.

3. The prosecution case pertains to murder of one Rohan Galande which was committed at about 12.15 p.m. on 08/02/2008 near Shubham Society at Vadgaon-Sheri, Pune. It is the prosecution case that there was enmity between the accused no.1 and PW 1 Rahul Kilje and because of this enmity, this incident took place. According to the prosecution case, the accused no.1 assaulted the deceased with

a knife on his chest and the accused no.2 assaulted PW 1 Rahul kilje with a knife on his left thigh and right forearm. After the assault, the accused went away from the spot. Rohan's father was informed who came on the spot in his car and removed Rohan to Jahangir Hospital. During their travel, Rohan allegedly told his father that the accused no.1 had assaulted him with knife and the accused no.2 had assaulted his friend PW 1. Before Rohan could be admitted, he had breathed his last and therefore, was declared dead on admission. The accused were arrested. The weapons were recovered at the instance of the accused no.1. Statements of various witnesses were recorded and at the conclusion of the investigation, the charge-sheet was filed. As the case was exclusively triable by the Court of Sessions, it was committed to the Court of Sessions for trial. The case was tried before the learned Additional Sessions Judge, Pune, vide Sessions Case No.391 of 2008 and at the conclusion of the trial, the learned Judge convicted and sentenced the accused / Appellants as mentioned earlier.

4. During trial, the prosecution examined 10 witnesses. PW 1 Rahul Kilje was the injured eye witness. PW 2 Tushar Kavade was a pancha for spot panchanama. PW 3 Pandurang Lole was a pancha in

whose presence clothes of PW 1 were seized. PW 4 Balasaheb Bhide was a pancha in whose presence the weapons and the motorcycle were recovered at the instance of the accused no.1. PW 5 Dnyaneshwar Galande was the father of the deceased. PW 6 Maqbool Baksh was the pancha in whose presence one Razzak Shaikh produced a wallet containing the accused no.2's documents which he had found. PW 7 Dr. Ajay Taware had conducted the post-mortem examination. The post-mortem notes are produced on record at Exh.66. PW 8 Kishor Patil was a pancha in whose presence the clothes of PW 5, the father of the deceased, were seized. PW 9 Dr. Kunal Waghmare was the Medical Officer attached to Jahangir Hospital who was on duty when the deceased was brought to the hospital. He has produced medical papers on record at Exh.73 and PW 10 Sr.PI Prasad Hasabnis had conducted the investigation.

5. The deceased had suffered injuries on his chest. The relevant witness i.e. PW 7 Dr. Taware has deposed that there was one elliptical stab wound over left supra mammary region 6 cms above left nipple of 5 X 2 cms opening in thoracic cavity. Its angles and margins were clean cut and the injury was fresh. The internal examination

showed stab wound over 3rd inter coastal space of 5 X 2 cms. Upper border of 4th rib showed clean cut fracture. Stab wound over left lung was of 3.5 X 5 cms. Right lung was found pale. Left lung showed stab wound over upper lobe of 3.5 X 5 cms which was the wound of entry and 3 X 5 cms which was the wound of exit. Track of wound was 2 cms. Direction of the wound was medially downwards. In the large vessels, stab wound was found over base of aorta of 2 X 5 cms opening in aorta.

6. PW 1 Rahul has deposed that on 06/02/2008, deceased Rohan informed him on phone at about 8.00 p.m. that both the accused were searching for PW 1 Rahul. PW 1 has further deposed that he went to Ujwal Garden compound and found that both the accused were present there. When PW 1 asked them why they were searching for him, the accused no.1 told him that since PW 1 had abused them, they were searching for him. The accused no.1 challenged him to have confrontation. However, PW 1 refused the challenge. On 07/02/2008 when PW 1 was riding a motorcycle for dropping his sister at Vimannagar, both the accused chased him and troubled him. On 08/02/2008 at about 12.15 p.m., PW 1 and Rohan

were proceeding towards Shubham Society. PW 1 was riding the motorcycle and Rohan was the pillion rider. At that time, both the accused were seen near a tree. The accused no.1 picked up quarrel with PW 1. It is the case of PW 1 that he tried to reason with the accused no.1 but the accused no.1 was not in a mood to listen to him and told him that PW 1 would know the truth only when somebody is murdered. At that time, the accused no.1 took out a knife and gave its blow on the chest of Rohan. Rohan got down from the bike and tried to run away. The accused no.1 chased him. At that time, the accused no.2 assaulted PW 1 with knife on his left arm and right hand. The accused no.2 also tried to assault on the stomach of PW 1. He warded off the blow with his leg. Thereafter, both the accused left the spot. He has further deposed that somebody informed him about Rohan lying in injured condition and therefore, he rushed there. After some time, Rohan's father came there in his four wheeler and both Rohan and PW 1 were removed to Jahangir Hospital. PW 1's injuries were treated by the doctor at Jahangir Hospital. The officers of Yerawada Police Station came there. PW 1 narrated the incident to them. His statement was recorded and was treated as the FIR. The FIR is produced on record at Exh.43.

7. PW 5 Dnyaneshwar Galande has stated that on 08/02/2008 at about 12.15 p.m., one Santosh came to his house and told him that his son was being assaulted by somebody near Shubham Gardeniya Society bus stop. PW 5 went there and saw Rohan lying in a pool of blood. PW 1 was found nearby in injured condition. This witness then put both of them in the car and took them to Jahangir Hospital. On the way, his son informed PW 5 that the accused no.1 assaulted Rohan with knife and the accused no.2 assaulted PW 1 with another knife.

8. PW 4 Balasaheb Bhide was a pancha in whose presence the accused no.1 made a statement showing his willingness to point out the place where he had concealed the weapons of assault i.e. two knives. He has deposed that after recording his statement, the police party, the panchas and the accused no.1 went towards Lohgaon Road and at one spot, the accused no.1 stopped them and took out one plastic bag from the bushes. The plastic bag was opened which contained two knives, one sweater and one trouser. The articles were seized and sealed. One Hero Honda Passion motorcycle was recovered at the instance of the accused no.1 from a place near a

petrol pump near Poonam Hotel. It is the case of the prosecution that the accused had left the spot on that motorcycle. The CA reports show that the knives had human blood. The blood-group was inconclusive. The trouser of the accused no.1 recovered at his instance showed presence of blood of 'A' group. The blood found on the spot also showed presence of blood of 'A' group.

9. The analysis of the above-mentioned evidence led by the prosecution shows that the prosecution has been successful in proving that the incident had taken place at the said place and time and it was witnessed by PW 1. The murder weapons were recovered at the instance of the accused no.1 from the place which was within his exclusive knowledge. The weapons were kept in a plastic bag and were concealed at a place, which was within exclusive knowledge of the accused. The evidence of PW 1 in respect of the assault is corroborated by the evidence of PW 5, the father of the deceased. According to PW 5, his son told him about the incident which amounted to oral dying declaration. This fact is further corroborated by the medical papers which records the history as the assault by these accused nos.1 and 2. Therefore, we are satisfied that the accused

nos.1 and 2 are the authors of the injuries ascribed to them. However, the question still remains as to whether the offence would be that of murder or any other lesser offence.

10. Mr. Joshi submitted that the evidence led by the prosecution was not cogent and the genesis is suppressed. The Appellants had not gone to the deceased to assault him. Therefore, there was no preparation to commit murder.

11. If the story narrated by PW 1 is taken into account, there are some factors which are not properly explained through any cogent prosecution evidence. According to PW 1, the accused no.1 was angry with PW 1. PW 1 and the deceased Rohan were on the motorcycle. When they came near the accused, the accused no.1 again confronted PW 1 and directed his anger towards him. In that case, it does not stand to reason as to why the accused no.1 did not assault PW 1 and instead assaulted Rohan. The entire prosecution case does not throw light on this aspect as to why Rohan was assaulted instead of PW 1 when PW 1 was very much present at the scene. Therefore, in our opinion, the prosecution has not clearly brought on record the genesis

of the incident. Moreover, when the accused no.1 had given one blow on the chest of the deceased, the deceased tried to run. Obviously, both the accused were armed with deadly weapons and if their intention was really to commit murder of the deceased and the PW 1, there would have been more blows on the deceased as well as the PW 1. However, no further blows were inflicted on the deceased and PW 1 has not suffered any blow on any of his vital parts. Therefore, we are of the opinion that, the prosecution has not properly proved as to how the incident had started and the genesis of the incident is not before the Court. Therefore, to that extent, we are inclined to grant benefit of doubt to both the accused. In our opinion, considering the facts of this case, Exception 4 mentioned in Section 300 of the IPC is attracted. The accused no.1 had given a blow on chest and therefore, the intention as mentioned in the first part of Section 304 of the IPC can be attributed to him. Therefore, we hold that the accused no.1 has committed an offence punishable under Part I of Section 304 of the IPC.

12. Insofar as the accused no.2 is concerned, though he was present with the accused no.1, there is nothing to show that they were

expecting the deceased and the PW 1 to pass from that road at that point of time. Therefore, there was no premeditation and hence there was no common intention to commit murder. Therefore, the accused no.2 cannot be held liable for the act committed by the accused no.1. The prosecution has not brought on record the exact nature of injuries suffered by PW 1. According to the prosecution case and PW 1 himself, the accused no.1 had assaulted him with knife on his forearm and leg. The trial Court's Judgment mentions the injuries suffered by PW 1. There were two CLWs over left arm having dimension 6 cm X 2 cm X 1 cm and 3 cm X 2 cm X ½ cm. The Medical Officer who had examined PW 1 was not examined during trial. But even taking these injuries into consideration, they do not show that they were grievous injuries or they could have endangered the life of PW 1. No further evidence is led by the prosecution in that behalf. The accused no.2 had ample opportunity to commit murder of PW 1 if he really intended to do so. However, the fact that PW 1 was left at the spot with injuries on non-vital parts shows that none of the accused had any intention to commit his murder. Therefore, the offence of Section 307 is not made out against any of the accused and in particular, against the accused no.2 who was convicted for the same. However,

there is no denying the fact that PW 1 had suffered wounds because of the assault on him by knife attributable to the accused no.2. Therefore, the accused no.2 can be said to have committed the offence punishable under Section 324 of the IPC.

13. In view of the above discussion, we pass the following order :

ORDER

- (A) (i) Criminal Appeal No.284 of 2012 is partly allowed.
- (ii) The Judgment and Order of conviction and sentence insofar as the Appellant / accused no1 is concerned, is altered to one Part I of Section 304 of the IPC from Section 302 of the IPC. For the same, he is sentenced to suffer R.I. for ten years.
- (iii) The Appellant / accused no.1 has already undergone the sentence. He be set at liberty forthwith, if not required in any other case.
- (iv) In view of disposal of the Appeal, Criminal Applications do not survive and stand disposed of accordingly.

- (B) (i) Criminal Appeal No.325 of 2012 is partly allowed.
- (ii) The order of conviction under Section 307 of the IPC is altered to the one under Section 324 of the IPC. For the same, the Appellant / accused no.2 is sentenced to suffer R.I. for the period already undergone by him.
- (iii) The Appellant accused no.2 is on bail. His bail bond shall stand discharged.

(SARANG V. KOTWAL, J.)

(B. R. GAVAI, J.)