

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.395 OF 2014

Mohammed Mehtab Shaukat Ali
Age : 25 Yrs., Occ.: Labour,
R/o : Naya Islampura, Plot No. 7,
Malegaon, District Nashik.

.... Appellant
(Ori. Accused no.1)

Vs.

The State of Maharashtra

.... Respondent

**ALONGWITH
CRIMINAL APPEAL NO.356 OF 2014**

Atahu Raheman Khurshid Ahmed
@ Tapal,
Aged 22 years,
R/o : Islampura, Galli No. 7,
House No. 763, Malegaon,
District Nashik.

.... Appellant
(Ori.Accused no.2)

Vs.

The State of Maharashtra

.... Respondent

Mr. Mahendra M. Sandhyanshiv for the Appellant in Criminal Appeal No. 395 of 2014.

Mr. Anilkumar K. Patil alongwith Mr. Pankaj Pandey for the Appellant in Criminal Appeal No. 356 of 2014.

Mr. Y.M. Nakhwa APP for the State.

Coram : Smt. Sadhana S. Jadhav, J.

Date : 5th December 2018

JUDGMENT :

1 Heard the learned counsel for the parties.

2 The appellants herein are convicted for the offences punishable under Sections 367 of Indian Penal Code and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.5,000/-, in default to suffer further rigorous imprisonment for six months.

The appellant, Mohammed (in Criminal Appeal No.395 of 2014) is convicted for the offences punishable under Sections 324, 326 and 506(II) of Indian Penal Code and sentenced to suffer rigorous imprisonment for two years, seven years and two years respectively and to pay a fine of Rs.1,000/-, Rs.5,000/- and Rs.1,000/- respectively, in default to suffer rigorous imprisonment for two months, six months and two months respectively, vide judgment and order dated 12th March 2014 passed by the learned

Ad-hoc District Judge-2 and Additional Sessions Judge, Malegaon in Sessions Case No.10 of 2009.

3 Such of the facts for the decision of these appeals are as follows :

Musharrief is the son of the first informant, Mohammed Sajid Abdul Rauf. Mushariff was studying in 11th standard in Progressive English Medium School at Malegaon. About one month prior to the date of incident, i.e. 26th July 2008, the first informant had learnt from reliable sources that his son Mushariff has developed friendship with Mohammed Mehtab Shaukat Ali (“Mehtab Ali”) (the appellant in Criminal Appeal No.395 of 2014). That Mehtab Ali had criminal antecedents and several criminal complaints were lodged against him at various police stations in Malegaon. The first informant had objected to the said friendship and had warned his son, Mushariff that he shall forthwith dissociate himself with Mehtab Ali. Mushariff had promptly started avoiding Mehtab Ali. Being aggrieved by the said dissociation, Mehtab Ali had threatened Mushariff that he would face dire consequences.

4 On 26th July 2008 at about 7.30 am., Mushariff had left for school alongwith his friend Monees Idris Qureshi i.e. (PW-3). On the way, Mehtab Ali alongwith accused no.2 (the appellant in Criminal Appeal No. 356 of 2014) and A-4 had approached Mushariff. Mushariff (PW-2) was threatened by Mehtab Ali. He was initially assaulted by fist blows. He was then obstructed by Mehtab Ali. He was taken to Malegaon-Manmad road. The original accused no.2 had departed from the company of the accused nos. 1 and 4. PW-2 Mushariff was taken to a barren land within the limits of village Tokade. The accused no.1– Mohammed and A-4 had tied his hands and legs and assaulted him by stone. Thereafter they had attempted to cut his tongue, but due to the strong resistance by PW-2, they could not succeed, hence, they had cut his lower lip with chopper. PW-2 was abandoned at the same spot. PW-2, Mushariff was shifted to Sion Hospital at Mumbai for further medical treatment and remained as an indoor patient for about 25 days.

5 It is further the case of the prosecution that PW-3, Monees Idris Qureshi who was present with PW-2, Mushariff, when

he was abducted had called upon the relatives of Mushariff and had narrated the incident. On the basis of the information of Monees Idris Qureshi, PW-1 had approached Malegaon police station and lodged the report against Mehtab Ali and two unknown person. On the basis of the said report, Crime number 73 of 2008 was registered at Malegaon police station for the offence punishable under Sections 363, 341, 323, 506 read with 34 of the Indian Penal Code. Section 307 of Indian Penal Code was added while filing the charge-sheet. Upon completion of investigation, the charge-sheet was filed. The case was committed to the Court of Sessions and registered as Sessions Case No. 10 of 2009.

6 The prosecution has examined 19 witnesses to bring home the guilt of the accused.

7 The case mainly rests upon the evidence of PW-2, Shaikh Mushariff Shaikh Sajid, the victim. PW-3, Monees Idris Qureshi, was present when the victim was abducted. PW-8, Dr. Saeed Ahmed Farani, who had examined the victim on 26th July 2008. PW-13, Pandurang Bhika Barve, who is the auto-rikshaw driver.

8 PW-2 has deposed before the Court that on 26th July 2008, he was proceeding to his school at about 7.30 am. alongwith his friend Monees Qureshi. Accused no.1 and his two associates came on a black coloured motorcycle. Mehtab Ali was armed with chopper, he brandished the same. He had pointed the chopper to the left side of his stomach and simultaneously started assaulting him with the other hand. The two associates of Mehtab Ali assaulted the victim with fists. That the original accused no.4 Javed Ahmed had snatched his school bag and threw it on the road. He was armed with pistol. He had pointed said pistol on the back of the victim. They had threatened PW-2 and made him sit on the motorcycle. The victim was made to sit behind Mehtab Ali and accused nos. 4 and 2 were sitting behind him. When they reached near Sangameshwar area road, the original accused no.2 alighted from the motorcycle and thereafter the victim was taken to Aurangabad highway. Mehtab Ali had shown his grievance against the parents of the victim as they were insisting upon him to dissociate with Mehtab Ali. After travelling for quite sometime on the motorcycle, Mehtab Ali realised

that there was no fuel in the motorcycle and therefore they halted at the road side. Accused no.4 took him in the nearby bushes. In the meanwhile Mehtab Ali had requested his friend to fetch petrol. A 23 to 27 years old boy had brought petrol in a plastic bottle, the same was filled and then that boy went away. The victim has identified accused no.3 as the person who had brought petrol. Thereafter the victim was taken to Dhule Highway. He was taken to secluded place, which was almost like a forest. At that place, the victim was threatened by Mehtab Ali saying that “your parents want to make you police”. The intention of accused Mehtab Ali was clear that he had intention to eliminate the victim. Both the accused had assaulted him with fists. His hands and legs were tied by Mehtab Ali. His legs were placed on a large stone and he was assaulted by another stone on both his legs. Accused no.4 had also assaulted the victim. He had cut lips with the chopper. After they saw that the blood was oozing, he was abandoned at the said spot. Thereafter accused no. 4 had informed Mehtab Ali that the victim has died and therefore they fled from the spot. PW-2 managed to rescue himself.

He reached main road and from there, he hired auto-rikshaw, asked the driver to call his family members and the he was admitted in Farhan hospital. He remained an indoor patient for about 22 days. The defence has failed to shatter the witness in his cross-examination. He was confronted with his statement. There are no inherent material omissions and contradictions. He has clarified that when police was recording his statement in the hospital, the Doctor had informed the Police that he was not in a fit condition to exert himself. There is no reason to disbelieve PW-2 on any count.

9 PW-3, Monees Qureshi happens to be an eye witness to the act of abducting PW-2 by Mehtab Ali and his associates, since he was in the company of PW-2 at the time of the incident. He has identified the accused in the Court. He was not acquainted with Mehtab Ali. He was informed by PW-2 that Mehtab Ali is his friend, however, he had never seen them together. He has been cross-examined at length on the issue of footwear of PW-2, which was recovered at his instance, however, he has explained the said circumstance that when Mushariff was being threatened and

abducted, his pair of footwear had fallen and he had collected the same.

10 PW-8, Dr. Saeed Ahmed Farani had examined PW-2 on 26th July 2008 at about 2.45 pm. and had found following injuries:

- (1) Chopped wound of lower lip from angle to angle, bleeding ++.
- (2) Swelling tenderness and deformity on both the hands. No fractures.
- (3) Swelling tenderness deformity on left leg below knee. No fractures were found on X-ray.
- (4) Swelling tenderness deformity on right foot, X-rays shows fracture distal pharynx of great toe.
- (5) Bruises and abrasions over extremities and back.

He has stated before the Court that the injuries were bleeding and thus they were fresh. After giving first-aid, he had directed the relatives of the injured to admit him in Sion Hospital, Mumbai for better management of the injuries. He had issued medical certificate, which is proved and marked as Exhibit "55". He has specifically stated that he had authorised Dr. Altaf to issue the certificate.

In the cross examination, it was admitted that the injuries sustained by PW-2 were not sufficient in the ordinary course of

nature to cause death. That statement of injured was recorded by Police in the hospital. It is specifically stated that he was transferred to Sion Hospital for undergoing plastic surgery on his lips. The other injuries are possible by hard and blunt object like iron or wooden logs.

11 PW-4, Jaur Shaha Kurban Shaha, PW-6, Anwar Shaha Ismile Shaha Fakir, PW-7 Gulab Shaha Munaf Shaha Fakir, PW-9 Mushtaque Shaha Yakub Shaha, PW-10 Shaikh Maheboob Shaikh Mohammed, PW-11 Nandkumar Pandharinath Patil @ Jadhav and PW-12 Sayyed Ismile Sayyed Rashid, PW-14 Akeel Supadu Shaikh, PW-15 Mohammed Tasin Mohd. Ahmed, PW-16 Raees Ahmed Abdul Aziz have been examined by the prosecution, but they turned hostile.

12 PW-13, Pandurang Bhika Barve was the owner of auto-rickshaw bearing registration No. MH-41/1142. He had taken the injured to the hospital in his auto rickshaw. He has been declared hostile by the prosecution, however, his statement to the extent that he had taken PW-2 to the hospital has been established in the cross-

examination also. He has admitted that while he came to village Vadgaon alongwith the injured boy in his auto-rickshaw, the relatives of the boy had approached him and requested him to take the injured to the hospital and accordingly he had obliged. Most of the witnesses are hostile.

13 The statement of injured, PW-2 and his father PW-1 would inspire confidence of the Court. He had been assaulted by the appellants. He would be the best witness in this case and therefore in the opinion of this Court, the sole testimony of the injured witness is sufficient to hold the conviction of the accused. It is a matter of record that Atau Raheman Khurshid Ahmed @ Tapal, the appellant in Criminal Appeal No.356 of 2014 was not present when PW-2 was assaulted. He had alighted on the road and had dissociated himself with the principal accused Mehtab Ali and others before they had assaulted Mushariff and therefore his conviction would be restricted to an offence under Section 367 of Indian Penal Code and therefore, he is sentenced to the period already undergone. Hence, the following order :

O R D E R

- (I) The Criminal Appeal No. 395 of 2014 stands dismissed.
- (II) The Criminal Appeal No.356 of 2014 is partly allowed.
- The Appellant is sentenced to the period already undergone. The sentence of fine is maintained.

(Smt. Sadhana S. Jadhav, J)