

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.824 OF 2015

Nirmalsing Surajprasad Sing

Age : 41 Yrs, Occupation : Service

Resident of Near Vaishnavi General Store,

Anganvadi Road, Near Himalaya Bakery,

Chikhali, Mora Wasti, Pune,

(At present lodged at –

Pune Central Prison, Pune)

....Appellant

V/s.

The State of Maharashtra

(At the instance of the Inspector

of Police, Nigdi Police Station, Pune)

...Respondent

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

Mr. S.V. Gavand, APP for the Respondent/State.

CORAM : A.M.BADAR, J.

DATED : 4th DECEMBER 2018.

ORAL JUDGMENT :

1. The appeal is taken up for final hearing by dispensing the paper-book in view of the order passed on Criminal Application No.1908 of 2018.

2. By this appeal, the appellant/accused is challenging the Judgment and Order dated 10.03.2015 passed by the learned

Additional Sessions Judge, Pune in Sessions Case No.472/2014, thereby convicting him of the offences punishable under Sections 307 and 452 of the Indian Penal Code. On the first count, he is sentenced to suffer imprisonment for seven years apart from imposition of fine of Rs.3000/- and default sentence of rigorous imprisonment for four months. On the another count, the appellant/accused is sentenced to undergo imprisonment for three years apart from imposition of fine of Rs.2000/- and default sentence of rigorous imprisonment for one month. Substantive sentences were directed to run concurrently.

3. Facts in brief leading to the prosecution of the appellant/accused can be summarized thus :-

(a) PW2 Ganesh Bapu Sane was owner of a building by name “Appa Nil Niwas” in area known as More Wasti, Chikhali, Pune. Rooms in that building were given on rent by PW2 Ganesh Sane. Injured PW1 Vijay Paule was residing adjacent to Room No.32, which was in possession of appellant/accused Nirmalsing as tenant. Appellant/accused Nirmalsing was suspecting that injured PW1 Vijay Paule was having illicit relations with his wife.

(b) The incident in question took place in morning hours of 12.04.2014. Injured PW1 Vijay Paule was sleeping in his room by

keeping its door open. At about 6.00 a.m., the appellant/accused entered in his room and uttered that he will teach a lesson to PW1 Vijay Paule because of illicit relations of PW1 Vijay Paule with his wife. These utterances were followed by successive blows of knife by appellant/accused Nirmalsingh on person of PW1 Vijay Paule, who sustained bleeding injuries. After assaulting PW1 Vijay Paule, appellant/accused Nirmalsingh ran away and this fact of his leaving the building was noticed by their landlord PW-2 Ganesh Sane. Upon hearing shouts, PW2 Ganesh Sane rushed to the room of injured PW1 Vijay Paule and noticed him lying in the pool of blood. Shantidevi, wife of appellant/accused Nirmalsingh also rushed on the spot. She along with her son took injured PW1 Vijay Paule to the YCM Hospital, Pimpri, Pune.

4. Upon admission of the injured to the YCM Hospital, Pimpri, his FIR Exhibit 13 came to be recorded by officials of the Police Station, Nigdi, Pune and accordingly, Crime No.191/2014 for the offences punishable under Sections 307 and 452 came to be registered against the appellant/accused. PW3 Dr. Kishorkumar Vasantrao Hande gave medical treatment to the appellant/accused.

5. During course of investigation, the spot of the incident came to be inspected on 12.04.2014 in presence of Panch Witness PW2 Ganesh Sane. Spot Panchnama Exhibit 16 came to be drawn. The appellant/accused came to be arrested. On the basis of his disclosure statement Exhibit 17, a knife and clothes came to be recovered vide Panchnama Exhibit 18. On completion of routine investigation, the appellant/accused came to be charge-sheeted.

6. Charge for the offences punishable under Sections 307 and 452 of the Indian Penal Code was framed and explained to the appellant/accused. He pleaded not guilty and claimed trial. In order to bring home the guilt to the appellant/accused, the prosecution has examined in all six witnesses. Injured Vijay Paule is examined as PW1. The FIR lodged by him is at Exhibit 13. Landlord Ganesh Sane is examined as PW2. The Spot Panchnama is at Exhibit 16. The voluntary disclosure statement as well as recovery panchnama at are Exhibit 17 and 18. Dr. Kishorkumar Hande, Casualty Medical Officer of YCM Hospital, Pimpri is examined as PW3. Exhibit 20 is the injury certificate whereas Exhibit 21 is the discharge card of PW1 Vijay Paule. PW4 Dilip Paule is a Panch Witness to the seizure of clothes of PW1 Vijay

Paule. Exhibit 23 is the Seizure Panchnama. PW5 Rajabhau Jogdand is a Panch Witness to the arrest panchnama Exhibit 25 dated 12.04.2014. Investigating Officer Mr. Vithal Salunkhe, API, Nigdi Police Station, Pune is examined as PW6.

7. The defence of the appellant/accused was that of total denial. However, he did not enter in the defence.

8. After hearing the parties, the learned trial Court by the impugned judgment and order had come to the conclusion that the appellant/accused committed house trespass in the house of PW1 Vijay Paule on 12.04.2014 with a preparation for committing murder of PW1 Vijay Paule and in fact attempted to commit his murder by giving blows of knife on his person. Accordingly, the appellant/accused came to be convicted and sentenced as indicated in the opening paragraph of this judgment.

9. I heard Mrs. N.S.K. Ayubi, the learned advocate appointed to represent the appellant/accused at the costs of the State in view of order passed on Criminal Application No.1908/2018. She vehemently argued that case of the prosecution is false on the face

of the record. The Medicolegal Certificate at Exhibit 20 shows that the incident took place at 5.00 a.m. of 12.04.2014 whereas the injured is stating that he was assaulted at 6.00 a.m. In submission of the learned counsel for the appellant/accused, the injured was sleeping in his house and as such he had no occasion to see as to who had assaulted him. Cross-examination of the injured shows that the injured was sharing good relations with the appellant/accused and his family members, and therefore, there was no reason for the appellant/accused to assault the injured. The learned advocate further argued that no case for the offence punishable under Section 307 of the Indian Penal Code is made out.

10. As against this, the learned APP argued that in a case of a single injured and a single accused, theory of false implication does not deserve a moment consideration. The motive for assault has come on record through evidence of injured and case of the prosecution is supported by the medical evidence as well as circumstantial evidence.

11. I have carefully considered the submissions so advanced

and also perused record and proceedings including copies of deposition of prosecution witnesses and documentary evidence adduced by the prosecution.

12. Undisputedly, the case in hand is a case of a single accused and the single victim. According to the prosecution case, the appellant/accused had murderously assaulted the injured. In case of a single accused, it is hard to believe that the injured would spare the real culprit and would rope in an innocent person for no reason. Let us therefore examine whether the injured had any reason to falsely implicate the appellant/accused in the crime in question. It is in evidence of injured PW1 Vijay Paule that the appellant/accused is his next door neighbor and they both were tenant of the same building. This fact is not challenged in the cross-examination of PW1 Vijay Paule and as such there is no reason to disbelieve the same. On this backdrop, PW1 Vijay Paule has spoken that when he was sleeping in his room, at about 6.00 a.m. of 12.04.2014, appellant/accused Nirmalsing entered in the room and threatened him by saying that he is having illicit relations with wife of appellant/accused Nirmalsing. PW1 Vijay Paule testified that then the appellant/accused gave blows of knife

on his chest, neck and left hand. Thereafter, wife and son of the appellant/accused took him to the YCM Hospital where he lodged report Exhibit 13.

13. Cross-examination of the injured reflects that he was knowing the appellant/accused since long and he is friend of son of the appellant/accused. Prior to the incident in question, there was no dispute between the appellant/accused and injured PW1 Vijay Paule, as seen from the cross-examination of the injured. This makes it clear that there was absolutely no reason with the injured to falsely implicate the appellant/accused in the crime in question. His cross-examination is not containing any material which would doubt his testimony regarding the incident. From cross-examination of this witness, it is elicited that in five minutes walkable distance one could reach to the police out-post from the spot of the incident. Even if that is so, one cannot expect that instead of taking the injured to the hospital, he should have been taken to the police out-post.

14. Evidence of PW2 Ganesh Sane is fully corroborating the version of the injured. This witness is the owner of the building in

which the injured and the appellant/accused were residing as a tenant. As seen from the evidence of this witness, he saw the appellant/accused running out of the building at about 6.30 a.m. of the day when the incident took place. He also heard shouts from the building and therefore, he rushed to the spot to see PW1 Vijay Paule lying in the pool of blood at his room. As per version of PW2 Ganesh Sane, thereafter wife of the appellant/accused took the injured to the hospital.

15. PW2 Ganesh Sane has proved the spot panchnama Exhibit 16 recorded on the day of the incident i.e. on 12.04.2014. The spot panchnama is fully corroborating the version of this witness to the effect that there was blood on the wall, floor as well as bed-sheet of the tenanted room of the injured. It is thus seen that immediately after murderous assault on the injured, the appellant/accused was found running away from the spot of the incident by PW2 Ganesh Sane. This fact is fully corroborating the version of the injured. Even otherwise, evidence on record shows that being neighbors, the appellant/accused and the injured were fully knowing each other and as such there is no chance of mistaken identity.

16. Evidence of PW3 Dr.Kishorkumar Hande, Casualty Medical Officer working with the YCM Hospital shows that injured PW1 Vijay Paule has suffered the following wounds in the assault :-

External injuries

- a. Stab injury of size 3x1x2 cm over right breast.
- b. Stab injury of size 1x1x2 cm over left axilla.
- c. Incised wound of size 3x1x1 cm over left forearms mid 1/3rd medically.
- d. Incised wound of size 1x0.5x0.5 cm over lower lip.
- e. Incised wound of size 5x1x0.5 cm over neck anteriorly at mid 1/3rd .

17. As per version of this Medical Officer, the injuries suffered by the PW1 Vijay Paule were sufficient in the ordinary course of nature to cause death of a human being. Those injuries were found to be caused by a sharp and pointed object.

18. PW3 Dr. Kishorkumar Hande denied the fact that injuries of the nature suffered by PW1 Vijay Paule could be caused by a fall of a person by second floor on the iron bar by sharp edge. He however admitted that on suffering such fall a stab injury is

possible along with multiple contusion. This hypothetical answer is of no avail to the defence as the medical officer did not find any contusion on the injured. Thus, the injuries found on person of the injured are certainly attributable to the assault on him by the appellant/accused.

19. The prosecution has also adduced evidence of recovery of weapon at the instance of the appellant/accused. PW2 Ganesh Sane was the panch witness to this recovery. As per version of PW2 Ganesh Sane, in his presence on 14.04.2014, the appellant/accused made a statement that he would show the place where the knife and clothes are kept and accordingly, the memorandum statement at Exhibit 17 came to be prepared. Thereafter, the appellant/accused, as stated by this witness took the panch witness and police to his house and then he took out the knife and clothes, which were kept under the bush near the gate of his house. Accordingly, by effecting seizure panchnama Exhibit 18, the knife as well as clothes came to be seized. The seizure panchnama shows that there were stains of blood on the knife as well as the clothes.

20. As seen from evidence of PW6 Vithal Salunkhe, the Investigating Officer that seized articles were sent by him for chemical analysis on 21.04.2014. The C.A. report at Exhibit 11 shows that the seized knife as well as clothes were stained with human blood of 'O' group. The C.A. report at Exhibit 10 shows that blood of the injured was of 'O' group. This makes it clear that the knife and clothes recovered at the instance of the appellant/accused were having stains of blood of 'O' group and the appellant/accused was known the place where those articles were kept concealed. The Medicolegal Certificate at Exhibit 20 shows that time of assault reported to the medical officer was 5.00 a.m. The injured had deposed that he suffered injuries at 6.00 a.m. The incident took place in morning hours of 12.04.2014. At that time, the injured was sleeping in his room. It is not expected that the injurer to know the exact time of happening of the assault on him. This minor discrepancy is not sufficient to discard the evidence of the injured witness, which is gaining corroboration from other evidence on record.

21. In the result, the prosecution has established that the appellant/accused had inflicted blows of knife on person of

injured PW1 Vijay Paule, thereby causing injuries at his right breast, left axilla, forearms, face as well as neck. The number of blows and seat of the wounds apart from the weapon used clearly makes out intention of the appellant/accused to commit murder of PW1 Vijay Paule. Thus, the prosecution has made out the offence punishable under Sections 452 and 307 of the Indian Penal Code against the appellant/accused. The sentence imposed on him cannot be said to be harsh and unwarranted. As such, the appeal fails and therefore, the order.

22. The appeal is dismissed.

(A.M.BADAR J.)