

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.851 OF 2015

Gopalsing Dhumsing Dudhani,
Age about 59 Years,
R/o. Mulanagar Hutment,
Old Sangvi, Pune-7.
(At present lodged in Yerwada
Central Prison, Pune)

.....Appellant

V/s.

The State of Maharashtra,
(Through Police Inspector,
Sangvi Police Station, Pune.)

....Respondent

Mrs. N.S.K. Ayubi, Appointed Advocate for the Appellant.
Mr. P.H. Gaikwad Patil, APP for the Respondent/State.

CORAM : A.M.BADAR, J.

DATED : 7th DECEMBER 2018.

ORAL JUDGMENT :

1. By this appeal, the appellant/accused is challenging the Judgment and Order dated 07.03.2015 passed by the learned Additional Sessions Judge, Pune in Sessions Case No.99/2013, thereby convicting the appellant/accused of the offence punishable under Sections 307 and 326 of the Indian Penal Code. On the first count, he is sentenced to suffer rigorous imprisonment for seven years and on the second count, he is sentenced to suffer rigorous imprisonment for five years. Substantive sentences were directed to run concurrently by the learned trial Court.

2. Brief facts leading to the prosecution of the appellant/accused can be summarized thus :

(a) The incident in question allegedly took place on 20.09.2012 at about 12.15 p.m. or thereafter at the base the hillock having foot-way at Mulanagar Zopadpatti of Old Sangvi, Pune. The prosecuting party as well as the appellant/accused are said to be resident of the same locality i.e. old Sangvi, Pune.

(b) It is the prosecution case that on 20.09.2012, PW2 Parshuram Bhandari was proceeding towards the hillock. At that time, the appellant/accused was coming from the opposite direction holding his bicycle in his hand. When they came near each other, the appellant/accused intentionally dashed his bicycle against leg of PW2 Parshuram Bhandari. Upon that, PW2 Parshuram Bhandari by questioning the act of the appellant/accused asked him to see people on the road while walking with the bicycle. The appellant/accused then started abusing him and the wordy duel took place between them. The appellant/accused then took out a big knife from the bag hanging with the handle of his bicycle and was about to dealt a blow of that knife on abdomen of PW2 Parshuram Bhandari. At that juncture, PW3 Mahadevi Bhandari, who happens to be mother of PW2 Parshuram Bhandari intervened and tried to pacify the appellant/accused. However, the

appellant/accused gave a blow of knife on abdomen of PW3 Mahadevi Bhandari. Since her mother was being assaulted, PW1 Mallamma Bahadur, PW5 Devika Bhandari and Bhagyashree attempted to intervene. At that time, the appellant/accused gave blows of knife on person of PW5 Devika Bhandari. He then assaulted PW1 Mallamma Bahadur by means of knife. In the meanwhile, PW4 Mallappa Bahadur, who happens to be husband of PW1 Mallamma Bahadur came there. He tried to caught hold of the appellant/accused. However, the appellant/accused gave a blow of knife on his thigh. In this way, according to the prosecution case, the appellant/accused assaulted PW1 Mallamma her mother PW3 Mahadevi Bhandari, PW5 Devika Bhandari as well as PW4 Mallappa Bahadur apart from Bhagyashree.

(c) Injured PW4 Mallappa Bahadur, PW3 Mahadevi Bhandari and PW5 Devika Bhandari were then taken to Makan Hospital, Pune. PW1 Mallamma Bahadur and Bhagyashree took medical treatment at the Civil Hospital. PW1 Mallamma Bahadur then went to the Police Station, Sangvi, Pune on 20.09.2012 itself and lodged the FIR Exhibit 22, which resulted in registration of Crime No.325/2012 against the appellant/accused.

(d) During the course of investigation, the spot was inspected. Clothes of the injured as well as that of the appellant/accused came to be seized. On the basis of voluntary disclosure statement Exhibit 47, knife came to be seized vide Seizure Panchnama Exhibit 48. Routine investigation followed and on completion of investigation, the appellant/accused came to be charge-sheeted.

(e) Charge for the offences punishable under Sections 307 and 302 of the Indian Penal Code as well as under Section 25 of the Indian Arms Act, 1959 and under Section 135 of the Bombay Police Act, 1951 came to be framed and explained to the appellant/accused. He pleaded not guilty and claimed trial.

(f) In order to bring home the guilt to the appellant/accused, the prosecution has examined in all fourteen witnesses. The defence of the appellant/accused is that of total denial. He, however, did not enter in the defence.

(g) After hearing the parties, the learned trial Court by the impugned judgment and order was pleased to convict the appellant/accused and to sentence him as indicated in the opening paragraph of this judgment.

3. I heard Mrs. N.S.K. Ayubi, the learned advocate appointed to represent the appellant/accused at the costs of the State. By taking me through the Record and Proceedings, the learned counsel argued that even according to the prosecution case, the incident allegedly took place because of old dispute between the parties and it was a sudden quarrel. Therefore, it cannot be said that the appellant/accused had assaulted injured PW3 Mahadevi Bhandari with an intention to commit her murder. Similarly, the prosecution has failed to prove the offence punishable under Section 326 of the Indian Penal Code as there is no evidence to show that the alleged victim of the crime in question has suffered grievous hurt. In submission of the learned counsel for the appellant/accused, considering the past enmity between the parties, possibility of false implication of the appellant/accused cannot be ruled out.

4. The learned APP supported the impugned judgment and order by arguing that evidence of the injured witnesses is reliable and trustworthy.

5. I have carefully considered the submissions so advanced and also perused the Record and Proceedings including oral as well as documentary evidence adduced by the parties.

6. The case in hand is that of multiple victims, but only one accused. In this view of the matter, it cannot be said that the victims of the crime would spare the real culprit and would rope in an innocent person and that too for a trivial reason. Similarly, it is well settled that injured witnesses are stamped witnesses, whose presence on the scene of the occurrence cannot be doubted as they themselves are the victims of the crime in question. Evidence of such injured witnesses can be acted upon if found trustworthy even without corroboration. One may argue that all injured are relatives and as such are interested witnesses. A witness is normally considered as independent witness unless such witness springs their sources which are likely to be tainted. When the incident takes place in the vicinity of house of the injured, inmates of house of the injured are natural witnesses to the incident. Unless and until a witness is in a position to derive benefit from the incident, he or she cannot be considered as an interested witness. Even if it is considered that the injured are relatives of each other, at the most this Court will have to scrutinize their evidence with care, but their testimony cannot be rejected on the ground that they are interested in securing conviction and they are related to each other.

7. The prosecution is placing reliance on testimony of four injured witnesses in the case in hand. They are PW1 Mallamma Bahadur and her mother PW3 Mahadevi Bahadari. Injured PW5

Devika Bhandari is sister of PW1 Mallamma Bahadur and daughter of PW3 Mahadevi Bhandari. Injured PW4 Mallappa Bahadur is husband of injured PW1 Mallamma Bahadur.

8. I have carefully considered and examined version of these four witnesses and I have found it to be clear, cogent, congruous and consistent. Let us see what First Informant/PW1 is telling about the incident. At the time of incident, she was cheat-chatting with her neighborer. She saw her brother PW2 Parshuram Bhandari ascending the hillock and at the same time, she noticed the appellant/accused descending from the hillock with his bicycle. As per version of this witness, the appellant/accused dashed his bicycle against PW2 Parshuram Bhandari and there was hot exchange of words between them. PW1 Mallamma Bahadur further deposed that then the appellant/accused took out a knife from the bag and rushed towards PW2/Parshuram Bhandari. At that moment, her mother PW3/Mahadevi Bhandari intervened. Then the appellant/accused stabbed her on abdomen and her mother PW3/Mahadevi Bhandari fell down and became unconscious. PW1/Mallamma Bahadur has further stated in her evidence that then her sisters PW5/Devika Bhandari and Bhagyashree attempted to intervene, but the appellant/accused inflicted blows of knife on left hand thumb and on head as well as on right elbow and palm of right hand of PW5/Devika Bhandari. He then gave a blow of knife on right palm of PW1/Mallamma

Bahadur. She further deposed that then PW4/Mallappa Bahadur reached at the scene of the incident and the appellant/accused gave a blow of knife on his thigh. PW4/Mallappa Bahadur then fell down and became unconscious.

9. In a like manner PW3/Mahadevi Bhandari has also deposed about the incident and has categorically stated that the appellant/accused gave blows of knife on her right arm, right thigh, abdomen as well as right palm. She also deposed about assault by the appellant/accused by means of knife on her daughter as well as son-in-law PW4/Mallappa Bahadur.

10. PW4/Mallappa Bahadur was returning from his workplace for taking lunch, he saw the incident and as stated by him, he tried to caught hold the appellant/accused. However, the appellant/accused gave a blow of knife on his right thigh causing bleeding injury and the resultant collapse. He stated that he regained consciousness when he was in hospital. Then he took treatment. He was indoor patient for about 25 days. Similar is the evidence of PW5/Devika Bhandari. She deposed about assault by means of knife by the appellant/accused on prosecution witnesses and so far as she herself is concerned, has stated that the appellant/accused gave blows of knife on her both hands and on forehead.

11. PW2/Parshuram Bhandari though has not sustained injuries in the incident has stated the cause for the incident and has spoken about dash of the bicycle given to him by the appellant/accused rather deliberately. PW2/Parshuram Bhandari has described the incident vividly with all necessary details. His evidence shows that the appellant/accused gave blows of knife on injured witnesses PW3/Mahadevi Bhandari, PW4/Mallappa Bahadur, PW1/Mallamma Bahadur as well as PW5/Devika Bhandari.

12. The incident was reported to police by PW1/Mallamma Bahadur immediately on the very day of the incident. Substantive evidence of PW1/Mallamma Bahadur is fully corroborated by FIR Exhibit 22 lodged by her with all promptitude.

13. After going through the cross-examination of all injured witnesses so also that of PW2/Parshuram Bhandari, it is noticed that the cross-examiner could not cause any doubt in their version and their credibility is not shattered despite thorough cross-examination. What was attempted to demonstrate through cross-examination of the prosecution witnesses is the fact that the incident took place at the populous locality and the prosecuting party wanted to grab the house of the appellant/accused. How and in which manner the prosecuting party was having an evil eye on the house property of the appellant/accused is not brought on

record. How and in which manner the prosecution witnesses have suffered injuries on the day of the incident is not even suggested in cross-examination of all the injured witnesses as well as other witnesses. As such there seems to be no doubt for accepting the version of the incident coming from the mouth of the injured witnesses as well as evidence of eye witness PW2/Parshuram Bhandari. PW11/Deva Mangar is also resident of Mulanagar Hutment. This witness has seen the post event happening. He saw the prosecution witnesses with wounds and has also noticed the appellant/accused running towards the hillock holding a big knife in his hand. This evidence of PW11/Deva Mangar is also corroborating the version of the injured witnesses.

14. The medical evidence is fully corroborating the version of the injured witnesses regarding the assault. PW12/Dr. Meena Salve had examined PW1/Mallamma Bahadur and her daughter Bhagyashree on the day of the incident at the Civil Hospital, Aundh, Pune. This witness noticed a C.L.W. over right palm of PW1/Mallamma Bahadur. She noticed trauma on forehead as well as hands and foot of Bhagyashree. PW13/Dr.Kiran Makan of Makan Hospital has deposed about injuries noticed by him upon examination of PW4/Mallappa Bahadur, PW3/Mahadevi Bhandari and PW5/Devika Bhandari. He proved Medico Legal Certificates Exhibits 57 to 59 respectively reflecting the injuries on these injured witnesses. As per version of PW13/Dr.Kiran Makan, PW3

Mahadevi Bhandari has suffered C.L.W. over abdomen of size 30 Cm. x 10Cm. x 10 Cm. He noticed a C.L.W. over right hand of size 6 x 4 x 3 Cm. and similar wound on right thigh of size 8 x 6 x 4 Cm. caused to PW3/Mahadevi Bhandari. Dr.Kiran Makan has categorically stated that all these injuries were grievous in nature and this evidence shows that PW3/Mahadevi Bhandir had taken treatment as indoor patient for about 22 days in the hospital. So far as PW5/Devika Bhandari is concerned, Dr. Kiran Makan has deposed that she suffered C.L.W. over forehead of size 5 Cm. x 3 Cm. x 2 Cm. and cut injury to the left hand of size 4 x 3 Cm.

15. Evidence of PW13/Dr. Kiran Makan shows that stab injury on left thigh of PW4/Mallappa Bahadur was of size 4 Cm. X 2 Cm. It was 4 inches x 2 inches deep. Because of this injury, femoral artery of PW4/Mallappa Bahadur was ruptured.

16. The medical evidence shows that the injuries suffered by the prosecution witnesses is possible by the seized knife. The injured witnesses have identified the weapon, so also the appellant/accused has the author of the injuries on their person.

17. During the course of investigation, on the basis of voluntary disclosure statement Exhibit 47 made by the appellant/accused, a knife came to be seized vide seizure panchnama Exhibit 48. PW9 Tanajai Gavali has witnessed this disclosure statement and the

resultant seizure.

18. If this evidence brought on record by the prosecution is carefully considered, then it is seen that the appellant/accused is proved to have indiscriminately assaulted prosecution witnesses namely PW1/Mallamma Bahadur, PW3/Mahadevi Bhandari, PW4/Mallappa Bahadur and PW5/Devika Bhandari. PW3/Mahadevi Bhandari had suffered a big wound on her abdomen by a knife and size of that injury was 30 Cm. x 10 Cm. x 10 Cm. Choice of weapon, the force applied for causing injury and size of the injury caused reflects the intention. The learned trial Court as such has correctly held that the appellant/accused has attempted to commit murder of PW3/Mahadevi Bhandari. Similarly, the stab injury to right thigh of PW4/Mallappa Bahadur has caused rupture of femoral artery and it was a life threatening injury. Accordingly, the appellant/accused was convicted of the offence punishable under Section 326 of the Indian Penal Code by the learned trial Court and no fault can be found with this finding.

19. Resultantly, the appeal, as such, is devoid of substance and as such the order :-

- : ORDER : -

The appeal is dismissed.

(A.M.BADAR J.)