

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.984 OF 2015

Amit Ramadiya Gehchand,
Presently lodged in Nashik Central
Prison and having permanent
residential address at Rom No.7,
Chawl No.1, Valmiki Nagar,
Bharat Nagar, Bandra (E),
Mumbai – 400 051.

... **Appellant**

V/s.
The State of Maharashtra
(Through B.K.C. Police Station,
Mumbai.)

... **Respondent**

.....

Mrs.Nasreen S.K.Ayubi, Advocate for the Appellant.

Mr.P.H.Gaikwad-Patil, APP for the Respondent/State.

....

CORAM : A.M.BADAR J.

DATED : 10th DECEMBER 2018.

ORAL JUDGMENT :

1 By this appeal, the appellant/accused is challenging the Judgment and Order dated 14/08/2015 passed by the learned Additional Sessions Judge, Greater Mumbai in Sessions Case No.705 of 2014 thereby convicting him of the offences punishable under Sections 307, 506(II) and 504 of the Indian Penal Code.

For the offence punishable under Section 307 of the Indian Penal Code, he is sentenced to suffer rigorous imprisonment for four years apart from imposition of fine of Rs.2,000/- and default sentence of simple imprisonment for three months. For the offence punishable under Section 506 Part II of the Indian Penal Code, he is sentenced to suffer rigorous imprisonment for two years apart from imposition of fine of Rs.300/- and default sentence of simple imprisonment for one month. For the offence punishable under Section 504 of the Indian Penal Code, he is sentenced to suffer rigorous imprisonment for six months apart from imposition of fine of Rs.200/- and default sentence of simple imprisonment for fifteen days.

2 Facts in brief leading to the prosecution and resultant conviction of the appellant/accused can be summarized thus :

(a) Appellant/accused Amit Gehchand and injured P.W.No.2 Sanjay Tak are neighbourers residing at Valmiki Nagar, Bandra (East), Mumbai. Both of them were married individuals. P.W.No.2 Sanjay Tak, the injured was having love relations with Priya, who happens to be wife of appellant/accused Amit Gehchand. Once P.W.No.2 Sanjay Tak and said Priya eloped and stays together for four to five days. However, then both families had a meeting and that matter was settled by conciliation.

(b) According to the prosecution case, appellant/accused Amit

Gehchand was having grudge against P.W.No.2 Sanjay Tak because of his affair with Priya. He was waiting to take revenge of the incident of elopement. He took the opportunity on 15/06/2014 when P.W.No.2 Sanjay Tak along with his friends and acquaintance including P.W.No.3 Rahul Chandeliya and P.W.No.10 Rocky Chandeliya was playing cricket on B.K.C.-Kherwadi road, in the evening hours. At that time, P.W.No.10 Rocky Chandeliya was batting and injured P.W.No.2 Sanjay Tak was bowling. Ball hit by P.W.No.10 Rocky Chandeliya landed in a gutter and P.W.No.2 Sanjay Tak was in the process of cleaning that ball. At that time, at about 6.45 p.m. of 15/06/2014, the appellant/accused came all of a sudden from a lane and gave a blow of knife on right side of abdomen of P.W.No.2 Sanjay Tak causing bleeding injury to him. The incident was being witnessed by players as well as P.W.No.1 Birbhan Tak, who is brother of the injured. Injured P.W.No.2 Sanjay Tak was then taken to the Bhabha Hospital, where he was treated by P.W.No.6 Dr.Sandip Kale.

- (c) P.W.No.2 Sanjay Tak lodged report (Exhibit 11) of the incident with B.K.C. Police Station on 15/06/2014 itself. Thereafter, the spot came to be inspected and the appellant/accused came to be arrested. On the basis of his voluntary disclosure statement (Exhibit 25), a knife came to

be seized vide panchanama (Exhibit 26). Clothes of the appellant/accused so also that of the injured came to be seized in presence of panch witnesses by effecting panchanama.

- (d) On completion of routine investigation, the appellant/accused came to be charge-sheeted. He pleaded not guilty to the charge framed and explained to him and claimed trial.
- (e) In Order to bring home the guilt to the appellant/accused, the prosecution has examined in all thirteen witnesses including the injured, eye-witnesses to the incident, panch witnesses, the Medical Officer as well as the Doctor.
- (f) Defence of the appellant accused was 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 of offences punishable under Sections 307, 506(II) and 504 of the Indian Penal Code. He is sentenced accordingly as indicated in the opening paragraph of this Judgment.

3 I heard Mrs.Nasreen S.K.Ayubi, the learned Advocate appointed to represent the appellant/accused at the cost of the

State. She vehemently argued that the case is that of a single blow to the abdomen and the resultant injury is also simple. Evidence adduced by the prosecution is lacunatic and even seizure panchanama (Exhibit 21) by which the prosecution has claimed to have seized clothes of the appellant/accused is not showing that those were stained with blood. The offence, as such, cannot travel up to one punishable under Section 307 of the Indian Penal Code.

4 The learned Additional Public Prosecutor supported the impugned Judgment and Order of conviction and resultant sentence.

5 I have carefully considered the rival submissions and also perused the oral as well as documentary evidence adduced by the prosecution.

6 Alleged murderous assault on P.W.No.2 Sanjay Tak is witnessed by three witnesses namely P.W.No.1 Birbhan Tak, P.W.No.3 Rahul Chandeliya and P.W.No.10 Rocky Chandeliya. The prosecution is relying on evidence of injured P.W.No.2 Sanjay Tak as well as evidence of these witnesses. In support of the charge levelled against the appellant/accused, evidence of P.W.No.6 Dr.Sandip Kale of Bhabha Hospital, Mumbai shows that on the day of the incident i.e. on 15/06/2014, he had examined and treated injured P.W.No.2 Sanjay Tak, who was having fresh injury on his abdomen from which blood was oozing. This makes

it clear that P.W.No.2 Sanjay Tak was wounded in the incident which took place on 15/06/2014 on Kherwadi-B.K.C. road of Mumbai. It is well settled that evidence of the injured eye-witness cannot be discarded in toto merely on the ground of his inimical dispositions towards the accused. In the case in hand, evidence on record suggests that injured P.W.No.2 Sanjay Tak was having illicit affair with wife of appellant/accused Amit Gehchand and he had enticed the wife of the applicant/accused and had eloped with her. Therefore, one may argue that as the parties were on hostile terms, there is possibility of false implication of the appellant/accused in the crime in question. Let us, therefore, scrutinize evidence of the injured as well as his friend and brother with caution taking into account the fact of previous enmity between the parties and tendency to exaggerate the fact in such contingency.

7 At the outset, let us put on record what is the version of injured P.W.No.2 Sanjay Tak. This witness himself has deposed about his love affair with wife of the appellant/accused and the resultant elopement with her for five days. With this, he has stated that in the evening hours of 15/06/2014, he was playing cricket with his friends namely P.W.No.3 Rahul Chandeliya, P.W.No.10 Rocky Chandeliya, Kallu, Sunny and Rohit. During the course of that play at about 6.45 p.m., when P.W.No.10 Rocky Chandeliya was on the batting end and he was balling, P.W.No.10

Rocky Chandeliya hit the ball, which landed in the gutter. P.W.No.2 Sanjay Tak testified that after retrieving that ball, he was cleaning it and at that point of time, the appellant/accused came from behind and stabbed him on right side of his abdomen with the knife. Thereafter, when he was trying to save himself from further assault, the appellant/accused indulged in pelting stones at him and those stones hit his leg. His friends, therefore, rescued him and then the appellant/accused ran away from the spot.

8 Except the fact that after inflicting the stab injury, the appellant/accused had pelted stones at injured P.W.No.2 Sanjay Tak, evidence of other eye-witnesses such as P.W.No.3 Rahul Chandeliya and P.W.No.10 Rocky Chandeliya is perfectly in tune with the version of the injured. They both have stated that during the course of playing cricket on B.K.C.-Kherwadi road, the appellant/accused suddenly came and gave a blow of knife on right side of abdomen of injured P.W.No.2 Sanjay Tak. P.W.No.3 Rahul Chandeliya deposed that the appellant/accused frightened him as well as others with knife. As per version of P.W.No.10 Rocky Chandeliya, after stabbing the injured, the appellant/accused raised the knife and warned them and ran away from the spot. These witnesses have also deposed about illicit relation of the injured with wife of the appellant/accused. P.W.No.1 Birbhan Tak is elder brother of P.W.No.2 Sanjay Tak.

He also vouched about the illicit relation of his brother P.W.No.2 Sanjay Tak. This witness stated that he was spectator and he saw the appellant/accused stabbing his brother Sanjay on abdomen. Chief-examination of P.W.No.1 Birbhan Tak does not show that the appellant/accused had threatened or warned either P.W.No.3 Rahul Chandeliya or P.W.No.10 Rocky Chandeliya. Rather, this witness has stated that when the appellant/accused was trying to continue assault, P.W.No.3 Rahul Chandeliya and P.W.No.10 Rocky Chandeliya came and rescued injured. Thereafter, as stated by P.W.No.1 Birbhan Tak, the appellant/accused ran away from the spot.

9 It is thus clear that evidence of the injured to the effect that after stabbing him, the appellant/accused pelted stones at him is by way of adding embellishment to the prosecution case. No other eye-witness is speaking about this aspect. Therefore, even if this embellishment is kept out of consideration, the fact remains that the clear, cogent and consistent evidence of the injured and the eye-witnesses reveals that the appellant/accused gave a blow of knife on abdomen of P.W.No.2 Sanjay Tak. There is nothing in cross-examination of all these witnesses to disbelieve their version about the incident. The appellant/accused came to be arrested immediately on the next day of the incident and in presence of P.W.No.7 Abdul Gaffur Latif Shaikh, Investigating Officer P.W.No.11 Navnath Kale, PSI has seized his jean pant and

T-shirt vide seizure panchanama (Exhibit 21) dated 16/06/2014. It is seen from the evidence of the prosecution that the appellant/accused made a disclosure statement on 16/06/2014 itself in presence of P.W.No.12 Vijaykumar Kadam, API. P.W.No.9 Shaikh Mohd. Tarik Mohd. Anis is a panch witness to that statement. Evidence of both these witnesses as well as the contemporaneous voluntary disclosure statement and the resultant recovery panchanama (Exhibit 26) makes it clear that at the instance of the appellant/accused, the knife came to be seized which was kept concealed behind the cylinder in kitchen of the house of the appellant/accused. It was found to be stained with blood.

10 P.W.No.13 Vaibhavi Harne, Police Inspector of B.K.C.Police Station had deposed about sending the seized articles for chemical analysis vide forwarding letter (Exhibit 35). The prosecution has placed on record report of chemical analysis of the seized articles. The Chemical Analysis Report at Exhibit 38 shows that blood of the victim was of 'O' group and the blood of the same group was found on clothes of the injured victim Sanjay Tak. Similarly, blood of 'O' group was found on seized shirt of the appellant/accused. The knife recovered at the instance of the appellant/accused was also found to be stained with blood of 'O' group. Chemical Analysis Report at Exhibit 36 makes it clear that blood of the appellant/accused is that of 'A' group. It is thus seen

that the appellant/accused was knowing the place where the knife was concealed which was having blood of 'O' group and the blood of same group was found on his shirt. Thus, finding of blood of the injured on the shirt of the appellant/accused and the knife recovered at his instance supports the case of the prosecution regarding murderous assault by the appellant/accused on P.W.No.2 Sanjay Tak.

11 After holding that the appellant/accused is the author of the wound on the abdomen of the injured, let us now examine wither the offence punishable under Section 307 of the Indian Penal Code is proved against the appellant/accused. Evidence of P.W.No.6 Dr.Sandip Kale shows that injured P.W.No.2 Sanjay Tak had suffered wound of size 5 c.m. x 1 c.m. on right lower region of the abdomen. This Medical Officer clarified the nature of the wound as a terminal ileum colon ascending colon and colon coming out from the said wound. As per evidence of the Medical Officer, there was external injury to caecum. P.W.No.6 Dr.Sandip Kale categorically deposed that nature of injury suffered by the appellant/accused was grievous and it was sufficient in the normal course of nature to cause death of a human being.

12 The appellant/accused had chosen a knife to give blow thereof on abdomen of the injured. He has caused grievous injury to the injured which, according to the opinion of the Doctor, was sufficient to cause death of a human being. The attack was totally

unprovoked. In this view of the matter, intention of the appellant/accused is writ large. The offence punishable under Section 307 of the Indian Penal Code stood proved against the appellant/accused. Sentence on this count imposed by the learned trial Court is also reasonable.

13 Now, let us examine whether the appellant/accused had indulged in criminal intimidation as well as intentional insult to injured P.W.No.2 Sanjay Tak with an intention to provoke him for breaching the peace. On both these counts, the appellant/accused is entitled for benefit of doubt as P.W.No.1 Birbhan Tak, who happens to be real brother of the injured, in chief-examination itself had deposed that after stabbing the injured, the appellant/accused fled from the spot as P.W.No.3 Rahul Chandeliya and P.W.No.10 Rocky Chandeliya approached the injured for rescuing him. Evidence on record, as such, is not sufficient to justify conviction of the appellant/accused of offences punishable under Sections 504 and 506 Part II of the Indian Penal Code. In the result, the following Order :

ORDER

- (i) The Appeal is partly allowed.
- (ii) Conviction of the appellant/accused of the offences punishable under Section 307 of the Indian Penal Code and the resultant sentence is maintained.

- (iii) However, conviction of the appellant/accused of the offences punishable under Sections 504 and 506 Part II of the Indian Penal Code so also the resultant sentence on these counts imposed on him by the learned trial Court is quashed and set aside.
- (iv) The appellant/accused stands acquitted of the offences punishable under Sections 504 and 506 Part II of the Indian Penal Code. Rest of the impugned Judgment and Order is maintained.
- (v) The Appeal is disposed of accordingly.

(A.M.BADAR J.)