

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

CRIMINAL APPEAL NO. 1493 OF 2011

Baban Ghanwat
Age Adult, Occ: Agriculturist,
Res. at Dhanwat Wadi, Chas,
Tal Khed, District Pune
(At present in Yerwada Jail) ..Appellant

v/s.

The State of Maharashtra ..Respondents

Ms. Nasreen Ayubi, Advocate appointed for the Appellant
Mr. Rajan Salvi APP for the Respondent-State.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
JUDGMENT RESERVED ON : 9TH AUGUST, 2017.
JUDGMENT PRONOUNCED ON : 12th JANUARY, 2018**

JUDGMENT:

1. The appellant who was accused in Sessions Case No.446 of 2010, and who shall be hereinafter referred to as the accused, has challenged the judgment dated 11th October, 2011 whereby the learned Addl. Sessions Judge, Pune has convicted him for the offence punishable under Section 307 of IPC and sentenced to undergo rigorous imprisonment for five years and to pay fine of Rs.500/- in

default to undergo rigorous imprisonment for one month.

2. Briefly stated the case of the prosecution is that the accused is a neighbor of the first informant PW1 Balasaheb Awati. The accused a chronic alcoholic. On 17.3.2010 at about 7.30 p.m. PW1 was in the balcony of his house, watching a wedding procession. The accused approached him and demanded money to purchase liquor. PW1 refused to give him money. Annoyed and angered by the refusal, the accused abused and threatened PW1. He pulled PW1 towards the rear side of his house and assaulted him with a sickle, and thereby attempted to cause his death.

3. PW1 was taken to the hospital. PW5 Chandrakant Shekhare, who was on duty at Khed Police Station had received information that PW1 was admitted in Birla hospital. He visited the hospital and recorded the statement of PW1 and registered Crime No. 52 of 2010 for offences under Section 307, 504 and 506 IPC. Further investigation was carried out by PW3 Mahesh Dhawan. Upon completion of the investigation, chargesheet was filed. The case being Sessions triable, was committed to the Court of Sessions. Charge was framed and explained to the accused. He pleaded not

guilty and claimed to be tried. The prosecution examined in all five witnesses. The statement of the accused was recorded under Section 313 Cr.P.C. The defence of the accused is that of total denial.

4. Upon considering the oral as well as documentary evidence, the learned Addl. Sessions Judge, by the impugned judgment convicted and sentenced the accused as stated above. Being aggrieved by the conviction and sentence, the appellant has preferred this appeal.

5. Ms. Nasreen Ayubi, the learned Counsel for the accused has submitted that the testimony of PW1 is not corroborated by any independent witness. She has further submitted that the testimony of PW3 who is the witness to the recovery panchanama does not prove that the accused had made any disclosure statement. The prosecution has therefore failed to prove that the sickle which is the alleged weapon of offence, was recovered at the instance of the accused. She has further submitted that the evidence on record does not prove that the accused had inflicted injury on PW1 with an intention to cause his death. She therefore contends that the ld. Judge was not justified in convicting the accused under section 307 of IPC.

6. Mr. Salvi, the learned APP has placed on record letter dated 3.7.2014 wherein the Superintendent of Yerawada Central Prison, Pune, has reported that the accused has already undergone the sentence and has already been released from the prison. He therefore contends that the question in principle is only as regards the conviction of the accused for offence under Section 307 of IPC. The learned APP has further submitted that the testimony of the injured witness PW1 amply proves that the accused had inflicted a blow of sickle on his chest. The testimony of PW1, which is also corroborated by the medical evidence sufficiently proves the overt act of the accused.

7. I have perused the records and considered the submissions advanced by the learned Counsels for the respective parties.

8. As it emerges from the testimony of the injured witness PW1 Balasaheb Avati vis-a-vis the first information report at Exhibit 26, on 17th March, 2010 at about 7.30 p.m. the applicant, his wife and mother were in the balcony of their house watching a wedding procession. The accused approached the applicant and demanded money to purchase liquor. When PW1 declined to give money, the

accused threatened to cause his death. The accused dared him to come out of the house and thereafter took him towards the rear side of the house. The accused pulled out a sickle which was concealed by him under his garments and inflicted blows of sickle on his chest and left arm. PW1 had stated that he had sustained bleeding injuries and that when he raised alarm, the accused fled away from the spot of the incident.

9. The testimony of PW1 reveals that he was treated at Sushrut Hospital at Khed, and thereafter referred to YCM Hospital, Chinchwad, where he was given further treatment. However, since there was no bed available he was referred to Birla Hospital at Pimpri Chinchwad. He has deposed that he was in ICU for about three days. These witness stated that the police had visited him in the hospital and recorded his statement/FIR at Exh. 26. The police had also seized the blood stained clothes which were worn by him at the time of the incident.

10. PW4 Dr. Kavita Varma is a Consultant Surgeon who was attached to Birla Hospital, Chinchwad. She has deposed that PW1 was admitted in Birla Hospital, and that she had examined him on

18th March, 2010. She has stated that PW1 had sustained a stab injury on the left side of the chest and a wound over the left arm. She has stated that PW1 was in IDP for three days. She has further stated that the said stab injury which was on the chest was of grievous nature. She has produced the injury certificate, which is at Exh. 38.

11. PW1 is an injured witness. His testimony amply proves that the accused herein had assaulted him with a sickle. The evidence of this witness has virtually gone unchallenged, and nothing has been brought on record to impeach his credibility. There are neither exaggerations nor material embellishment in his testimony so as to doubt his credibility. It is well settled that an injured witness comes with a built in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant. Hence, the evidence of an injured witness should be relied upon unless there are grounds for the rejection of his evidence on the basis of major contradictions and discrepancies therein. [vide *Bhajan Singh @ Harbhajan Singh & Ors. vs. State of Haryana (2011) 7 SCC 421, Abdul Saeed vs. State*

of Madhya Pradesh (2010) 10 SCC 259, Durbal vs. State of Uttar Pradesh (2011) 2SCC 676]. As stated earlier, in the instant case, there are no omissions or contradictions in the testimony of PW1. He has emerged as a truthful witness, and there are no reasons to discard his testimony. Furthermore, the evidence of PW1 is also corroborated by PW4 Dr. Kavita Varma. Her testimony, vis-a-vis the medical report clearly indicates that PW1 had suffered stab injury on the left arm as well as on the anterior chest wall. The said injury was of grievous nature and was caused by sharp edged cutting weapon. The testimony of these two witnesses, which has virtually gone unchallenged, amply proves that the accused had assaulted the first informant by means of a sickle.

12. The next pivotal question which arises is whether the evidence adduced by the prosecution proves that the accused had inflicted the injuries on PW1 with an intention of committing his murder. Suffice it to say that the question whether the assailant intended to commit murder of another person would depend upon the facts and circumstances of each case. To justify a conviction under Section

307 IPC the prosecution has to establish not only an overt act done by the accused, but has to further establish that such an overt act was committed with an intention of committing murder or with a knowledge that such act would cause death. Once such intent or knowledge is proved, the nature of injury inflicted pails into insignificance.

13. In the instant case, the evidence of PW1 indicates that the overt act was preceded by threat to cause death. The accused who had come armed with a weapon had inflicted a blow on the vital part of the body. Having regard to the nature of the weapon used by the accused, nature of injury and the situs of the injury, in my considered view, the learned Judge was justified in attributing intent as well as knowledge to the accused and consequently holding him guilty of offence under Section 307 of IPC.

14. For the reasons stated above, the appeal has no merits, and is hereby dismissed.

(ANUJA PRABHUDESSAI, J.)