

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO.73 OF 2019

Jhamsingh s/o Kedarsingh Jamadar,
Age-60 years, Occu:Service,
R/o-Shahidganj, In front of Gurudwara,
Shahidpura, Gurudwara Gate No.3,
Nanded, Tq. and Dist-Nanded.

...APPLICANT

VERSUS

The State of Maharashtra,
Through Itwara Police Station,
Nanded, Tq. and Dist-Nanded

...RESPONDENT

...

Mr.M.V. Ghatge Advocate for Applicant.
Mr.S.Y. Mahajan, A.P.P. for Respondent.

...

CORAM: V.M. DESHPANDE, J.

DATE : 27TH MARCH, 2019

JUDGMENT :

1. This Revision Application was listed on
7th March, 2019. On the said date notice was issued
to the Respondent State and learned Additional

Public Prosecutor waived the service. Record and Proceedings were called, consequently the same are received.

2. Today, this Revision Application is listed for admission. The Record and Proceedings is also placed before me for consideration.

3. After hearing Shri, M.V. Ghatge, the learned counsel for the Applicant and Mr. S.Y. Mahajan, the learned Additional Public Prosecutor for the State, with their consent, Rule is issued and is made returnable forthwith.

4. By the present Revision Application, the Applicant is challenging the Judgment and order of conviction and sentence passed by the learned Assistant Sessions Judge, Nanded on 9th February, 2012 in Sessions Case No.60 of 2010. By the said, the learned Assistant Sessions Judge, Nanded,

convicted the Applicant for the offence punishable under Section 307 of the Indian Penal Code and directed him to suffer rigorous imprisonment for seven years and to pay a fine amount of Rs.1000/-, and in default of payment of fine, to suffer further rigorous imprisonment for two months. Learned trial Court also granted set off under Section 428 of the Code of Criminal Procedure.

5. Feeling aggrieved by the Judgment and order of conviction, the Applicant preferred the appeal before the Sessions Judge, Nanded, and it was registered as Criminal Appeal No.19 of 2012. On 6th February, 2019, the learned Sessions Judge, Nanded, dismissed the appeal and took the Applicant into custody to suffer the sentence. Against these, the present Revision Application is filed.

6. The prosecution case, as it was unfolded

during the course of the trial, can be narrated succinctly, as under;-

A) In the year 2009, Sayyed Azam Sayyed Yousuf (PW-16) was attached to police station Itwara of Nanded. On 11th December, 2009, when he was discharging his duties in the said police station, a telephonic information about Medico-Legal Case from the hospital was received. Upon getting such information, he immediately rushed to the Government hospital. There, he recorded statement of Jagjitsingh Khalsa (PW-1). The statement recorded is at Exhibit-35. On the basis of said, he registered an offence vide C.R. No.140 of 2009, for the offence punishable under Section 307 of the Indian Penal Code. The printed First Information Report is at Exhibit-66.

B) As per the oral statement of Jagjitsingh (PW-1), prior to two years, he purchased half portion of plot from Applicant - Jhamsingh, situated at Abchalnagar of Nanded and thereafter he carried construction thereon. Prior to one month of the incident, he gave Rs.4,00,000/- to the Applicant - Jhamsingh, who executed an agreement for selling remaining half portion of the land. Inspite of said, it was learnt by Jagjitsingh that, Jhamsingh/Applicant is intending to dispose of the property, therefore, he filed civil suit and obtained the injunction. According to the report of Jagjitsingh (PW-1), due to the said, the Applicant got annoyed and on 11th December, 2009, at 8.15 a.m., the Applicant entered the plot along with

sword and assaulted repeatedly, resulting into suffering various injuries. The First Information Report states that the incident was seen by Kulwantsingh and others, thereafter the Applicant ran away from the spot. It is also stated in the report that, Kulwantsingh put the first informant into auto rickshaw and brought to the Government Hospital, Nanded.

C) After the registration of crime, PW-16 Sayyed Azam visited the spot and prepared spot panchnama in presence of panchas. Spot panchnama is at Exhibit-61. He also recorded statement of witnesses. The Investigating Officer also seized clothes of the complainant under seizure panchnama (Exhibit-69). He caused arrest of the Applicant under arrest panchnama (Exhibit-70). Sword was also seized from

the Applicant under seizure panchnama (Exhibit-40). During the custodial remand, the Applicant gave his disclosure statement. The admissible portion of his disclosure statement is at Exhibit-46, whereby he agreed to show the place where the clothes which were on his person at the time of incident are concealed. Accordingly, in presence of panchas, the Investigating Officer went to the spot and from there, the Applicant took out the clothes and also pointed out the vehicle which was used by the Applicant. The said articles are seized under recovery panchnama (Exhibit-47). The Investigating Officer also forwarded all seized articles to Chemical Analyzer, Aurangabad under requisition letter (Exhibit-52). After the completion of the investigation, charge-sheet was presented

in the Court of Jurisdictional Magistrate at Nanded.

D) The learned Jurisdictional Magistrate, in turn, committed the case to the Court of Sessions and thereafter it was registered as Sessions Case No.60 of 2010 and was allotted on the file of the Assistant Sessions Judge, Nanded.

E) In order to bring home the guilt of the Applicant, the prosecution examined 16 witnesses and also relied upon various documents duly proved during the course of the trial. After appreciation of the prosecution case, in the opinion of the learned Assistant Sessions Judge, the guilt of the Applicant was proved beyond reasonable doubt, therefore, he convicted the

Applicant on 9th February, 2012 resulting into the filing of Criminal Appeal No.19 of 2012, which was dismissed by the learned Sessions Judge, Nanded on 6th February, 2019. Hence this Revision Application.

7. I have heard Shri M.V. Ghatge, the learned counsel for the Applicant and Shri S.Y. Mahajan, the learned Additional Public Prosecutor for the State in extenso. With their able assistance, I have gone through the entire Record and Proceedings.

8. It is the submission of learned counsel for the Applicant that the Applicant is falsely implicated in crime in view of the pending civil dispute between him and the injured. It is also submitted that, there was no motive on the part of the Applicant, resultantly, he ought not to have

been convicted for the offence punishable under Section 307 of the Indian Penal Code. It is his alternate submission that, at the most the Applicant can be convicted for the offence punishable under Section 326 of the Indian Penal Code. It is also his submission that the eye witnesses had turned hostile and it will be unsafe on the part of the Courts to convict the Applicant on the basis of sole testimony of the injured alone. He therefore, submitted that Revision Application be allowed. He also made prayer for reduction of quantum of sentence looking to the age of the Applicant.

9. Per contra, the learned Additional Public Prosecutor supported both the Judgments delivered by the Courts below and prayed for dismissal of the Revision Application.

10. Dr. Vidya Ramchandra Zinde (PW-12) was

the medical officer at SGGS Hospital, Nanded as D.M.O. When Jagjitsingh was brought to the hospital, on examination she found following injuries on his person;-

1) Displaced fracture on right parietal bone of skull,

2) CLW with traumatic amputation, size 15X5X3 cm. on left forearm, first, second and little finger amputation,

3) CLW with partial amputation, size 5X2X2 cm. on right thumb and right index finger.

. Dr. Vidya Zinde (PW-12) proves the injury certificate, Exhibit-57.

11. Dr. Manish Bhagwanrao Deshpande (PW-6) examined injured Jagjitsingh Khalsa. His evidence would show that Jagjitsingh sustained injuries on his head and both hands. Dr. Manish Deshpande

examined the patient and accordingly issued certificate, which is at Exhibit-44. From the evidence of Dr. Manish Deshpande and Medico-Legal Certificate Exhibit-44, following are the injuries found on the person of injured Jagjitsingh;-

- 1) Right fronto parietal scalp admeasuring 15X1X1 cm.,
- 2) Right palm between index and middle finger 10X1X1 cm.,
- 3) Right thumb tip admeasuring 1X0.5X0.5 cm.,
- 4) Left middle finger dorsum, 8X1X1 cm.,
- 5) Left palm distally, 4X1X1 cm.,
- 6) Left ring finger volar PIP, 3X1X1 cm.,
- 7) Left forearm ulnar side, 50X1X4 cm.,

8) Right little finger at PIP level,
amputation,

9) Left middle finger ring finger and
little finger at different levels,
amputation,

10) Right ring finger, amputation,

11) Right high parietal outer cortex,
fracture.

12) Right thumb terminal phalynx tip,
fracture,

13) Right middle finger neck of middle
phalynx, fracture,

14) Left middle finger base of Prox.
Phalynx, fracture,

15) Left ring finger shaft of middle
Phalynx, fracture.

. According to the doctor who examined the

injured, injury Nos.7 to 9 were grievous in nature and could be caused due to sharp object and injury Nos.10 to 15 also grievous, due to sharp and heavy object. Dr. Manish Deshpande also deposed from the witness box that all the grievous injuries were on the vital part of the body of the injured and were dangerous to his life. Though Dr. Manish Deshpande was cross-examined by the learned cross-examiner, nothing could be brought on record to discard his evidence and/or disbelieve his version.

12. From the evidence of Dr. Manish Deshpande and injury certificate Exhibit-44, the injuries appearing on the person of Jagjitsingh, the injured, it is clear those injuries were not self inflicted injuries.

13. According to the prosecution, the Applicant is the author of the injuries found on the person of injured Jagjitsingh Khalsa.

14. According to the submission of the learned counsel for the Applicant, except the evidence of PW-1 Jagjitsingh Khalsa, no other witness is supporting the prosecution to show that it is the Applicant who has caused injuries.

15. The prosecution has examined PW-2 Kulwantsingh Ragi and PW-3 Mannusingh Bidla, as eye witnesses, in addition to the testimony of the injured, to prove the case against the Applicant.

16. PW-2 Kulwantsingh and PW-3 Mannusingh had turned hostile. Merely because the witnesses have turned hostile, their evidence is not completely washed out and part of the evidence of such witness, which is otherwise acceptable, can be acted upon, is the law laid down by the Hon'ble Apex Court, as it could be seen from the authoritative pronouncement of the Hon'ble Apex

Court in the case of **Khujji alias Surendra Tiwari vs. State of M.P.**¹ In the recent Judgment in the case of **Vinod Kumar vs. State of Punjab**², the Hon'ble Apex Court followed the view taken in the case of **Khujji alias Surendra Tiwari vs. State of M.P.**

17. Evidence of Kulwantsingh(PW-2) would show that he knows both, Applicant and injured. His evidence would show that after dropping his grand-son in a school bus, he was returning to Abchalnagar. When he crossed the road, he heard noise, "*Bachao, Bachao*". Thereafter he returned back towards Mangal Karyalaya and noticed that Jagjitsingh was lying in injured condition. He, with the assistance of Shersingh, lifted Jagjitsingh (injured) and brought to the Government Hospital in auto rickshaw.

1 AIR 1991 S.C. 1853

2 (2015) 3 S.C.C. 220

18. From the aforesaid, it is clear that the injured was assaulted. The Investigating Officer (PW-16) has proved portion marked from the statement of Kulwantsingh(PW-2) and it is at Exhibit-67.

19. Similar is the case with Mannusingh (PW-3). His evidence would show that he witnessed the incident of assault on the injured by means of sword, however, he refused to identify the Applicant sitting in a Dock as a person who has assaulted upon the injured. In the cross-examination from the A.P.P., this witness has admitted that one Sardarji (Shikh) was assaulting on another Sardarji. The Applicant is admittedly a Shikh.

20. As per the submission of the learned counsel for the Applicant only the injured is attributing the role to the Applicant that he has

assaulted on him. It is submitted that it will be dangerous to uphold the conviction on the basis of solitary statement of the injured.

. I am not prepared to accept the submission of the learned counsel for the Applicant that merely the Applicant is pointed to be the person who has assaulted on the complainant by the complainant, the Applicant needs to be acquitted.

21. Number or quantity of the witnesses is not the yard-stick to decide a criminal case. It is always the quality of the evidence the Court is required to evaluate while reaching to the conclusion, as to whether the prosecution has proved its case against the accused. Even the solitary version of the injured, if it is found otherwise sufficient and inspires confidence in the mind of the Court, in my view, such evidence

of such solitary witness who is injured himself, is sufficient to record the finding of guilt.

22. Injured Jagjitsingh is examined as PW-1. His evidence would show that, it is on the line of his statement recorded by the Investigating Officer in the hospital. The incident is dated 11th December, 2009. On getting the telephonic information, PW-16 Sayyed Azam, the Investigating Officer, immediately rushed to the hospital, where he recorded statement of Jagjitsingh (Exhibit-35) and thereafter on the basis of the said, he registered the offence. Printed First Information Report would show that, on very same day at about 11.05 hours the offence is registered. Thus, the offence is registered immediately. The statement of injured was also recorded by the Investigating Officer immediately. Disclosure of the name of the Applicant at the first opportunity by the injured to the police, in my view, is pivotal one. Prompt

lodgment of the First Information Report always rules out the possibility of false implication. In addition to it, in the present case not only the injured has taken the name of the Applicant as a person who has assaulted him, but also vividly gave the description of the entire incident. Further, the evidence of PW-1 Jagjitsingh is duly corroborated by the medical evidence.

. The cross-examination of the injured does not destroy the core of the prosecution case in respect of the assault made on him by the Applicant.

23. No doubt true, panch witnesses to the spot panchnama have turned hostile, however, the spot panchnama is duly proved by the Investigating Officer.

24. The Investigating Officer did send the

seized articles including the clothes and weapon to the Chemical Analyzer in a sealed condition. C.A. report is at Exhibit-71. The clothes of the Applicant, namely T-shirt and full pant are stained with human blood "B" group. As per the C.A. report, blood group of injured is, "B". Similarly, sword, the weapon is also stained with human blood, "B". When this incriminating material was brought to the notice of the Applicant when he was examined under Section 313 of the Code of Criminal Procedure by the learned Judge, he failed to offer any explanation. In my view, thus the version of injured is duly corroborated by the scientific evidence also. It is to be mentioned here that from the line of cross-examination of injured, it is clear that there exist civil dispute. In my view, that can be the motive for commission of the offence.

25. According to the learned counsel for the

Applicant, there was no intention on the part of the Applicant and therefore in absence of any *mens rea*, the Applicant cannot be convicted for the offence punishable under Section 307 of the Indian Penal Code, and at the most he could be convicted for the offence punishable under Section 326 of the Indian Penal Code.

26. The intention or *mens rea* is a mental process. It is always locked in the mind of the accused. The intention can be gathered from the attending circumstances. In the present case, while making assault on the injured, the Applicant chose a heavy sword, not only that, he gave repeated blows on the person of the injured. In my view, these cumulatively can safely allow the Court to reach to the conclusion that the Applicant was having intention to commit murder of the injured.

27. Insofar as reduction of sentence on the ground of age of the Applicant is concerned, in my view, the age of the accused alone cannot be mitigating factor to decide the quantum of sentence. Here, in this case from the medical evidence as available on record, it is clear that only with the grace of God the precious life of injured is saved. After giving first blow of sword, the accused did not stop, he continued the said process. In my view, in fact the Court below had already shown leniency by imposing punishment of seven years only, warranting no further leniency from this Court.

28. After perusal of the impugned Judgments by both the Courts below, and after hearing the learned counsel for the Applicant, he could not point out any perversity in any of the Judgments delivered by the Courts below. In my view, the Courts below were right in returning the finding

of guilt against the Applicant. Consequently, there is no merit in the Revision Application. The Revision Application is dismissed. Rule is discharged.

[V.M. DESHPANDE, J.]

asb/APR19