

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.415 OF 2007

1. Dalbirsingh s/o. Lalsingh Paharedar,
Age : 20 years, Occ. Pathi/Priest in
Gurudwara, r/o. Gurudwara,
Gate No.1, Nanded

(Appeal abated against appellant no.1
as per Court's order dt.17.11.2017)

2. Toni @ Avtarsingh s/o. Hardayalsingh
Padam, age : 21 years, Occ. Pathi/Priest
in Gurudwara, r/o. Shahidpura,
Nanded

(Appeal abated against appellant no.2
as per Court's order dt.27.11.2017)

3. Gopi @ Gurumitsingh s/o. Jogindersingh,
Age : 19 years, Occ. Pathi/Priest in
Gurudwara, r/o. Behind Gayatri Temple,
Old Mondha, Nanded

..Appellants
(Orig.accused)

Vs.

The State of Maharashtra,
Through Police Station, Vizirabad,
Nanded, Dist. Nanded

..Respondent

Mr.P.M.Shinde, Advocate (appointed) for appellants

Mr.R.V.Dasalkar, APP for respondent - State

WITH
CRIMINAL APPEAL NO.625 OF 2008
 AND
CRIMINAL APPEAL NO.626 OF 2008

The State of Maharashtra,
 Through Police Station,
 Vizirabad, Nanded,

..Appellant

Vs.

1. Dalbirsingh s/o. Lalsingh Paharedar,
 Age : 20 years, Occ. Pathi/Priest in
 Gurudwara, r/o. Gurudwara,
 Gate No.1, Nanded

(Appeal abated against respondent no.1
 as per Court's order dt.17.11.2017)

2. Toni @ Avtarsingh s/o. Hardayalsingh
 Padam, age : 21 years, Occ. Pathi/Priest
 in Gurudwara, r/o. Shahidpura,
 Nanded

(Appeal abated against respondent no.2
 as per Court's order dt.27.11.2017)

3. Gopi @ Gurumitsingh s/o. Jogindersingh,
 Age : 19 years, Occ. Pathi/Priest in
 Gurudwara, r/o. Behind Gayatri Temple,
 Old Mondha, Nanded

..Respondents

In both appeals :

Mr.R.V.Dasalkar, APP for appellants - State

Mr.P.M.Shinde, Advocate (appointed) for respondent

**CORAM : S.S. SHINDE AND
R.G. AVACHAT, JJ.
DATE : JANUARY 09, 2019**

JUDGMENT (PER R.G. AVACHAT, J.) :-

We appoint Mr.P.M.Shinde, learned Counsel to represent the cause of appellants in Criminal Appeal No.415 of 2007 and the respondents in Criminal Appeal Nos.625 of 2008 and Criminal Appeal No.626 of 2008.

2. The challenge in all these three appeals is to the impugned judgment and order dated 12.09.2007 passed by learned Additional Sessions Judge, Nanded in Sessions Case No.2 of 2007.

3. By the impugned judgment and order, the appellants in Criminal Appeal No.415 of 2007 and the respondents in Criminal Appeal Nos.625 and 626 of 2008, were convicted for the offences punishable under Sections 452 and 324 read with Section 34 of the Indian Penal Code ("I.P.C.", for short) and sentenced to suffer rigorous imprisonment for two

years and to pay a fine of Rs.1,000/- each and rigorous imprisonment for one year and to pay a fine of Rs.500/- each, respectively. In default of payment of fine amounts, the appellants were directed to suffer simple imprisonment for two months. They were acquitted of the offences punishable under Sections 392 and 394 read with Sections 397, 458, 34 and 427 so also under Section 4 punishable under Section 25 of the Arms Act.

4. Criminal Appeal No.415 of 2007 has been filed by the original accused taking exception to their conviction for the offences under Sections 452 and 324 read with Section 34 of the Indian Penal Code. Criminal Appeal No.625 of 2008 has been preferred by the State for enhancement of the sentence imposed against the accused (appellants in Criminal Appeal No.415 of 2007), whereas Criminal Appeal No.626 of 2008 has been preferred by the State against the order of acquittal of these accused for the offences mentioned above.

5. Pending the appeals, appellant nos.1 and 2 in Criminal Appeal No.415 of 2007 (respondents in Criminal Appeal Nos.625 and 626) passed away. The appeals stood abated against them.

6. For the sake of convenience, the parties to Criminal Appeal No.415 of 2007 are referred to.

7. PW 6 - Mahendrakaur was a widow. She would stay along with her two sons in a rental premises near Gurudwara, Nanded. On 14.03.2006 at about 11.30 p.m., the appellants/original accused armed with swords, broke open backside door and entered her house. On questioning by PW 6 - Mahendrakaur, the appellants/accused assaulted her and her son i.e. PW7 - Hardipsing with swords. Both of them sustained bleeding injuries. The appellants/accused smashed T.V. Set and other household articles. They robbed PW 6 - Mahendrakaur of her gold chain worth Rs.9,000/-.

8. PW 6 - Mahendrakaur, therefore, lodged report in respect of the incident to Vazirabad Police Station. A crime vide C.R. No.77 of 2006 came to be registered for the offences punishable under Sections 452, 394, 427 and 397 of the I.P.C. against the appellants/accused. Needless to mention, PW 6 - Mahendrakaur knew the appellants/accused by name. PW 10 - Shivaji Sonawane, Police Sub-Inspector attached to Vazirabad Police Station, was entrusted with investigation of the crime. He visited the scene of offence. He drew the scene of offence panchanama (Exh.37). The appellants/accused were arrested within hours. The swords came to be seized from accused - Toni @ Avtarsingh (deceased) and accused Gopi @ Gurmitsingh under two separate panchanamas (Exh.32 and 33). Clothes on the persons of the appellants/accused were taken charge of under separate panchanamas (Exhs.34, 35 and 36). The appellant - Toni @ Avtarsingh (deceased) made a disclosure statement (Exh.29), pursuant to which

amounts of Rs.2,200/- and Rs.8,000/- came to be seized under panchanama (Exh.29-A). Both PW 6 - Mahendrakaur and PW 7 - Hardipsingh were medically examined. Their injury certificates were received. On completion of the investigation, the appellants/accused were proceeded against, by filing charge-sheet before learned Chief Judicial Magistrate. Learned Chief Judicial Magistrate committed the case to the Court of Session. Learned Additional Sessions Judge framed Charge (Exh.4) for the offences punishable under Sections 392, 394, 452, 458, 423 read with Sections 34, 397; and Section 4 punishable under Section 25 of the Arms Act. The appellants/accused denied the charge and claimed to be tried.

9. To sustain the charge, the prosecution examined in all twelve witnesses and tendered in evidence the documents such as panchanamas, injury certificates, seizure memo etc. On appreciation of the evidence, the trial Court convicted the

appellants in terms of the judgment and order impugned in these appeals.

10. Mr.P.M.Shinde, learned Counsel (appointed) for the appellants/accused in Criminal Appeal No.415 of 2007 and the respondents in Criminal Appeal Nos.625 and 626 of 2008, would submit that no independent witness had been examined in proof of the charge. The gold chain, allegedly robbed by the appellants/accused, has not been recovered. Seizure of the amounts pursuant to the disclosure statement made by accused Toni @ Avtarsingh (deceased) has no relevance to connect them with the charge. According to learned Counsel, had PW 6 – Mahendrakaur and PW 7 – Hardipsing were assaulted by swords, they would have suffered serious injuries. Learned Counsel invited our attention to their injury certificates (Exh.42 and 43), which do indicate them to have suffered simple injuries. According to learned Counsel, the FIR was lodged to settle the score with the appellants.

11. Mr.R.V.Dasalkar, learned APP for State, would, on the other hand, submit that PW 6 – Mahendrakaur had no reason to falsely implicate the appellants. She was the injured eye witness. She had no reason to exculpate the real accused and falsely implicate the appellants. PW 6 – Mahendrakaur was an independent witness. He was neighbor of PW 6 – Mahendrakaur. He had seen the appellants running away from the house of PW 6 – Mahendrakaur. The appellants/accused were nabbed within hours of the incident. According to learned APP, the trial Court ought to have convicted the appellants for all the offences with which they were charged. He would further submit that the sentence imposed against all of them were grossly inadequate as against the principle of proportionality. Learned APP, ultimately, urged for dismissal of Criminal Appeal No.415 of 2007 and allowing Criminal Appeal Nos.625 of 626 of 2008.

12. Before the Trial Court, the prosecution examined twelve witnesses. PW 1 to PW 5 are panch witnesses to various panchanamas. None of them stand by the prosecution. All of them were subjected to searching cross-examination. Nothing, however, could be elicited to connect the same with the crime in question. There is, however, evidence of injured eye witnesses (PW 6 - Mahendrakaur and PW 7 - Hardipsing) coupled with the evidence of neighborer (PW 8 - Ramsing). PW 6 - Mahendrakaur (first informant) testified that on 14.03.2006 at about 11.30 p.m., the appellants broke opened backside door of her house. They were armed with swords. Her both sons were fast asleep. She questioned the appellants, why did they enter her house. Thereupon, they started assaulting her and her son PW 7 - Hardipsing. It is further in her evidence that appellant - Gopi @ Gurumitsingh attacked her with a sword, as a result of which she sustained injury to her finger, while appellant - Dalbirsingh (deceased) gave sword blow on the right

hand and right leg of PW 7 – Hardipsing. The appellants smashed the T.V. set and damaged the house-hold articles. It is further in her evidence that the appellants robbed her gold chain.

13. The evidence of PW 6 – Mahendrakaur has been corroborated by the evidence of her son, PW 7 – Hardipsing. He gave his evidence on the lines of the evidence of his mother, PW 6 – Mahendrakaur. He, however, did not state the appellants to have robbed her gold chain. The evidence of both these witnesses find corroboration by the evidence of PW 8 – Ramsing. PW 8 – Ramsing is none other than the neighbor of PW 6 – Mahendrakaur. It was the day of Holi festival. PW 8 – Ramsing was on his way home after closing his shop. He claimed to have seen the appellants coming out of the house of PW 6 – Mahendrakaur.

14. These three witnesses were subjected to searching cross-examination, but none of them gave in. PW 12 – Suryakant, Medical Officer attached to

Shri Guru Govind Singh Memorial Hospital, Nanded, had medically examined both PW 6 – Mahendrakaur and PW 7 – Hardipsingh. He found following injuries on their person :-

Injury certificate of PW 6 – Mahendrakaur Satnam Singh:

Kind of Injury	Measurements	Part of Body	Simple or Grievous	Weapon	Age of Injury
(1) Incised	¼ x ¼ cm	(ii) Ring Finger	Simple	Sharp	Fresh

“Injury certificate of PW 7 - Hardipsingh Satnamsingh”

Kind of Injury	Measurements	Part of Body	Simple or Grievous	Weapon	Age of Injury
(1) Incised	1 ½ x 1 cm x ½ cm	(Rt) Forearm	Simple	Sharp	Fresh
(2) Incised superficial	5” line	(Rt) Forearm	Simple	Sharp	Fresh

15. PW 6 – Mahendrakaur knew the appellants by name. She had no reason to falsely implicate them. The scene of offence panchanama (Exh.37) indicates that the backside door of her house was broken open. TV set and other household articles were damaged. It

indicates that some incident took place at PW 6's house on 14.03.2006 at about 11.30 p.m. The FIR has been lodged within hours of the incident. The FIR corroborates PW 6's version. The injury certificates reinforces the claim of PW 6 – Mahendrakaur and PW 7 – Hardipsingh. Moreover, the appellants were seen by PW 8 – Ramsingh, while they were coming out of the house of PW 6 – Mahendrakaur at the relevant time. Pursuant to the statement (Exh.29) made by Toni @ Avtarsingh (deceased), cash amounts came to be recovered. The amounts recovered could not be connected with the offence in question. The trial court has, therefore, rightly acquitted the appellants of the offences punishable under Sections 392 and 394 read with Sections 397, 458, 34 and 427 so also under Section 4 punishable under Section 25 of the Arms Act. Based on the evidence of PW 6 – Mahendrakaur, PW 7 – Hardipsingh and PW 8 – Ramsingh, which was corroborated by the FIR and the injury certificates (Exhs.42 and 43), the trial court was

justified in convicting the appellants for the offences punishable under Sections 452 and 324 read with Section 34 of the Indian Penal Code. The punishment imposed against the appellants is found proportionate with the offences proved against them. We, therefore, are not inclined to allow any of the appeals. In the result, the appeals fail.

16. For the reasons given herein-above, all the Criminal Appeals are dismissed.

17. We appreciate the able assistance given by Mr.P.M.Shinde, learned Counsel, during the course of hearing of these appeals. We quantify his fees and expenses at Rs.8,000/- (Rs.Eight Thousand only).

[R.G. AVACHAT, J.]

[S.S. SHINDE, J.]