

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

**CRIMINAL APPEAL NO. 561 OF 2007**

Bhimashankar Tukaram Bhore.

Age : 43 yrs. Occ. Service,

R/of. Dhotri, Tal. South Solapur,

District : Solapur.

..Appellant.

v/s.

The State of Maharashtra.

..Respondent.

Mr. Vijay R. Garad i/b. Mr. Dhananjay K. Chavan, advocate for appellant.

Mr. S.S. Pednekar, APP for State.

**CORAM : SMT. SADHANA S. JADHAV,J.**

**DATE : OCTOBER 17, 2019.**

**JUDGMENT :**

1           The appellant herein is convicted for the offence punishable under section 307 of the Indian Penal Code and sentenced to suffer R.I. for three years and to pay fine of Rs. 2000/- I.d. to suffer R.I. for six months vide Judgment and Order dated 22/5/2007 in Sessions Case No. 91 of 2005 by the Ad-hoc Additional Sessions Judge, II, Solapur. Hence, this appeal.

2           Such of the facts necessary for the decision of this

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appeal are as follows :

(i) On 16/7/1993 one Bhagwan Vitthal Bhore was taken to Valsang Police Station in an injured condition. He lodged a report alleging therein that on that day at about 9.30 p.m. when he was proceeding to Laxmi Temple, at that time, Bhimashankar (present appellant) and Atmanand Waghmare were chatting with each other.

(ii) At that time, the cousin of the complainant had kicked them and therefore, a verbal altercation had ensued between all of them. That he had intervened and upon his intervention the present appellant had drawn knife from his pocket and stabbed him. That he was initially assaulted with fist and kick blows by Atmanand. He had raised hue and cry. Thereafter, his uncle Apanna Bhore had intervened. That his internal organs from stomach protruded. Pravin Bhore had tied the injuries with a towel and had taken him on his motor cycle to Valsang Police Station.

(iii) On the basis of the said report, Crime No. 27 of 1993 was registered at Valsang Police Station for offence punishable under section 324, 323, 504 read with section 34 of the Indian Penal Code.

(iv) The injured was admitted in Civil Hospital, Solapur. He had undergone operation. Investigation was set in motion. After about 2 months P.W. 3 who happens to be the father of the

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injured P.W. 2 Bhagwan Bhore had filed a private complaint.

(v) The private complaint was lodged by suppressing the fact that Crime No. 27 of 1993 is registered in respect of the same incident. The learned Magistrate had neither passed direction under section 156(3) of the Code of Criminal Procedure, 1973 or under section 202 of the Code of Criminal Procedure, 1973, but had issued process against the accused for the offence punishable under section 307 read with section 34 of the Indian Penal Code and therefore, the matter was committed to the Court of Sessions and registered as Sessions Case No. 115 of 2005.

(vi) At the trial, the prosecution examined as many as 8 witnesses to bring home the guilt of the accused.

3 P.W.1 Rajshekhar Jaure who happened to be a panch for scene of offence panchanama was declared hostile.

4 P.W. 2 Bhagwan Bhore happens to be the injured. P.W.2 has stated the chronology of the events. That Atmanand Wagmare had kicked Arun Bhore. They enquired with Atmanand about the said act and thereafter, accused Nos. 1 to 4 had started beating Arun Bhore and therefore, P.W. 2 had to intervene and he had to face consequences for intervention.

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Thereafter, accused Bhimashankar had drawn knife from his pocket and dealt knife blows on his stomach, due to which his intestine had protruded and 12 stitches had to be given.

5 P.W. 4 Pravin Bhore had reached the spot, pushed intestine inside the stomach and tied with towel and he had taken him to Valsang Police Station. The blood was oozing from the injury. He had become almost unconscious and had to be taken to Civil Hospital, Solapur. Doctor advised his operation and rest for 3 months. His statement was not recorded in the hospital. He has proved the contents of the FIR which is at Exh. 11.

6 In the cross-examination, he has given the genealogy of the families. It is pertinent to note at this stage that initially he feigned ignorance of the fact that he was prosecuted in the complaint filed by Suryakant Bhore. However, later on admitted that he had been arrested in the said offence and enlarged on bail. There are several omissions and contradiction in the deposition of P.W. 2. The said contradictions are marked as portion marked A, B and C. That Madhukar and Maruti were being prosecuted on the basis of the private complaint and that P.W. 2 had not attributed any act to them in the FIR. The portion marked “A” and “B” are as follows :

“Bhimashankar and Atmanand were chatting. That they were kicked by Arun. That he was fully conscious soonafter the incident when he was taken to Valsang Police Station.”

7        At this stage, it needs to be marked that Suryakant who happens to be the brother of the present appellant had lodged report at the same police station in respect of the same incident, which was registered as Crime No. 28 of 1993. It is categorically admitted by the Investigating Officer Prabhakar Gopala that there was overwriting and interpolation as far as Crime Nos. 27/98 and 28/98 are concerned. It is clear that it is deliberate effort to suppress as to which of the fact was brought to the notice of police prior in point of time.

8        P.W. 3 Vithal Bhore happens to be the father of the injured. According to him, his house is situated at a distance of hardly 30 ft. from Laxmi Temple where the incident had occurred. That upon hearing hue and cry, he had rushed to the spot and he had witnessed that Atmanand and Madhukar had caught hold of his son Bhagwan and in front of him, the present appellant had stabbed Bhagwan with a knife. That he, with help of Pravin Bhore, had kept the intestine inside the stomach and had tied injuries with the help of towel. Thereafter, he was

taken to Walsang Police Station by Pravin Bhore and Shrimant Birajdar. According to him, on 6/9/1993 he had filed a complaint in the Court of JMFC Akkalkot and the same is marked at Exh. 16. According to him, clothes of his son were blood stained due to the said injuries. But those clothes had gone missing from Civil Hospital, Solapur. There are inherent omissions and contradictions in the evidence of P.W. 3 also and the same are marked as contradictions. He has admitted that it is not reflected either in his statement under section 161 or in his private complaint that the said incident was witnessed by Pravin Bhore and Basappa Hakke.

9 P.W.4 Pravin Bhore is posed as an eye witness. According to him when he reached the spot Bhagwan was lying on the ground. He saw bleeding injuries. He rushed home to get his Rajdoot motor cycle and he had taken Bhagwan to Walsang Police Station alongwith Srimant Birazdar. The witness has admitted that in his evidence before the Judicial Magistrate First Class, Akkalkot that he had not stated that he is an eye witness to the incident.

10 P.W. 5 Dr. Bhishmacharya Godale was attached to Civil Hospital Solapur. According to him, the patient was fully conscious and well oriented. He had noticed stab injury over

epigastric region, measuring 3 cms. X 2 cms. Cavity deep. Edges and margins of the injuries were clear. The patient was discharged on 26<sup>th</sup> July, 1993. The witness has neither produced medical case papers on record and has neither stated as to what was the type of operation that was performed on the injured. According to him, there was rupture of liver and hematoma has been removed by performing laprotomy. Left lobe of liver was torn. In the cross-examination, it is admitted that the injury mentioned in the certificate cannot be possible by the weapon muddemal before the Court i.e. knife, which was recovered pursuant to the memorandum under section 27 of the Indian Evidence Act. The knife was recovered at the instance of Atmanand and not at the instance of the present appellant. It appears from the evidence of the doctor that father-in-law of injured was discharging duties at Civil Hospital, Solapur. Injury certificate is at Exh. 23, which shows a single injury i.e. penetrating injury to Epigastric which is 3 x 2 c.m. cavity deep.

11 P.W. 6 Vijaysinh Gaikwad was an Investigating Officer of Crime No. 27/93 and 28/93. He has proved the omissions and contradictions in the evidence of injured (PW2), P.W. 3 his father Vithal and P.W. 4 Pravin. He has admitted that there is over writing on Crime No. 27 and 28 at the time of registration itself. He has also admitted that the private complaint as well

as the evidence on record is exaggeration. There is no mention of intestine protruding.

12 P.W. 7 is hostile. P.W. 8 Prabhakar Gopale was subsequent investigating officer. He has categorically admitted in the cross-examination that it had transpired in the investigation that Kishor Vithal Bhore wielded the knife in commission of offence. That there was no blood lying on the spot. He has also admitted that there was overwriting in the crime number and time. He had denied the suggestion that Suryakant Bhore had lodged the report prior to Bhagwan.

13 In this case, the complainant Bhagwan Bhore was also convicted in Sessions Case No. 116 of 2005 and he had filed Criminal Appeal No. 645 of 2007 in which he was convicted for the offence punishable under section 323 of the Indian Penal Code. At that time, the parties i.e. present appellant and Bhagwan Bhore had amicably settled the dispute. Therefore, the present appellant had filed an affidavit contending therein that they have amicably settled the issue. Prayer was made to compound the offence under section 320 subclause (6) of the Code of Criminal Procedure, 1973 and said application for composition was allowed by an order dated 31/7/2007. Thereafter, similar affidavit was filed by Bhore in the present

appeal. By an order dated 21/9/2007, said application was rejected by taking into consideration the nature of injuries sustained by P.W. 2 Bhagwan.

14 It is admitted position that at the time of registration of crime No. 27 of 1993 as well as at the time of filing of private complaint, P.W. 2 and P.W. 3 had suppressed the very genesis of the incident. It was not brought to the notice of the court that a cross-case is pending, which pertains to the same incident. That the doctor had specifically admitted that in case of fall on iron sheet, the injuries would be possible. The weapon is recovered at the instance of the acquitted accused Atmanand and not at the instance of the present appellant. The nature of injuries sustained by P.W. 2 do not stand corroborated by the nature of the weapons which were recovered. The doctor has not placed on record the medical case papers to substantiate the fact that the laparotomy was performed on the said injured. That there is interpolation in crime registration number and therefore it would be difficult to ascertain as to which one party is aggressor in this case. The very fact that the eye-witnesses and the injured are not disclosing that they were also an accused in the cross-case, needs to be taken into consideration.

15            In view of the above discussion, the appeal deserves to be allowed.

16            Hence, following order is passed :

**ORDER**

(i)            The appeal is allowed.

(ii)           The Judgment and Order dated 22/5/2007 in Sessions Case No. 91 of 2005 by the Ad-hoc Additional Sessions Judge, II, Solapur is hereby quashed and set aside. The appellant is acquitted of the offence punishable under section 307 of the Indian Penal Code.

(iii)           His bail bond stands cancelled.

(iv)           Fine, if paid, be refunded.

(v)           Writ be issued forthwith.

17            The appeal is disposed of accordingly.

**[SMT. SADHANA S. JADHAV, J.]**