

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

CRIMINAL APPEAL NO.587 OF 2003

Mr. Prakash Ganpat More
Age : 43 years, Occ.: Service
Residing at Room No. 34, 1st Floor,
Bldg. No. 3, New Police Line,
Naigaon Head Quarter,
Mumbai – 400 014

.... Appellant
(Ori. accused)

Vs.

The State of Maharashtra
At the instance of Senior Inspector
of Police, Bhoiwada Police Station,
Mumbai

.... Respondent

Mr. Veerdhawal Deshmukh, appointed Advocate for the Appellant.
Ms. Pallavi Dabholkar APP for State.

Coram : Smt. Sadhana S. Jadhav, J.
Date : 11th April 2019

JUDGMENT :

1. Heard the respective counsel.
2. The appellant herein is convicted for the offence punishable under Section 307 of Indian Penal Code and sentenced to

suffer rigorous imprisonment for five years and a fine of Rs.1,000/-, in default to suffer rigorous imprisonment for three months by the Additional Sessions Judge, Greater Bombay vide judgment and order dated 10th April 2003 in Sessions Case No. 1154 of 1995. Hence, this appeal.

3. Such of the facts necessary for the decision of the appeal are as follows :

The appellant herein was serving as a Police personnel. The accused was posted at Shivaji Nagar Police Station. The complainant was also posted at Shivaji Nagar police station. Being batch-mates they were good friends. It is the case of the prosecution that on 3rd March 1995, the complainant Bhaskar Gangaram Bhosale was on sick leave. That he alongwith his friends namely Sudhir Ahire and Keshav Utekar had been to Hotel Shobha, situated on Dahiwalkar Marg, Mumbai. Near Hotel Shobha, they were standing and chitchatting. The accused met them. They noticed that he was under the influence of alcohol. He demanded money to the complainant. The complainant (PW-2) refused to oblige and the

denial to lend the money had irked the accused- appellant. He abused the complainant. He returned within 5 to 10 minutes and suddenly assaulted PW-2 on his abdomen with a sharp weapon. The complainant had sustained bleeding injuries and he was taken to the KEM Hospital by his friends Utekar and Ahire.

4. The complainant had to undergo exploratory laprotomy due to stab injury. He was treated as an indoor patient for 7 days and was discharged on 10th March 1995. The statement of the injured was recorded in the hospital. The prosecution has examined as many as five witnesses to bring home the guilt of the accused. Investigating officers, Mr. Nikam and Mr. Gosavi had investigated the case. Since they had retired from service, they could not be examined at the trial and the prosecution has examined PW-5 Patangrao Jaysingh Salunkhe to prove the contents of the charge-sheet, which is based on the material collected in the course of investigation. The injured himself is an eye witness. The allegations levelled by him are substantiated by the medical certificate, which shows that the injury was so grievous in nature that the injured had

to undergo exploratory laprotomy.

5. PW-1, Dr. Ramkrishna Yashant Prabhu has proved the medical case papers, Exhibit '10' collectively. At this stage, it is pertinent to note that PW-1, Dr. Prabhu has not deposed before the Court that the injuries sustained by the accused is sufficient to cause death in ordinary course of nature.

6. Reliance can be placed on the judgment in the case of Virsa Singh Vs. The State of Punjab, reported in (1958 AIR 465, 1958 SCR 1495), the Hon'ble Apex Court has observed as follows :

“In considering whether the intention was to inflict the injury found to have been inflicted, the enquiry necessarily proceeds on broad lines as, for example, whether there was an intention to strike at a vital or a dangerous spot, and whether with sufficient force to cause the kind of injury found to have been inflicted. It is, of course, not necessary to enquire into every last detail as, for instance, whether the prisoner intended to have the bowels fall out, or whether he intended to penetrate the liver or the kidneys or the heart. Otherwise, a man who has no knowledge of anatomy could never be convicted, for, if he does not know that there is a heart or a kidney or bowels, he cannot be said to have intended to injure them. Of course, that is not the kind of enquiry. It is broad-based and simple and based on common sense: the kind of enquiry that

“twelve good men and true could readily appreciate and understand.

To put it shortly, the prosecution must prove the following facts before it can bring a case under Section 300, 3rdly”; Firstly, it must establish, quite objectively, that a bodily injury is present:

Secondly, the nature of the injury must be proved. These are purely objective investigations.

Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.

Once these three elements are proved to be present, the enquiry proceeds further and, Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature”.

7. In view of the failure on the part of the Doctor to state that the injuries were sufficient in the ordinary course of nature to cause death. It cannot be said that the offence committed by the appellant would fall under Section 307 of Indian Penal Code. Learned counsel for the appellant submits that the appellant at that time was under the influence of alcohol. According to him, the accused-appellant was deprived of his mental equilibrium since he

was under the influence of alcohol and therefore, he was enraged due to denial on the part of the complainant to lend him money. As against this, learned APP submits that the appellant herein was a police personnel and therefore he cannot claim the benefit of Section 85 of Indian Penal Code. He was capable of knowing the nature of the act and was fully aware what he was doing either wrong or contrary to law.

8. It is not the case of the appellant that he was administered alcohol without his knowledge or his concern and therefore cannot claim the benefit under Section 85 of Indian Penal Code. In fact, it would not be necessary to take recourse to Section 85 of Indian Penal Code since there is nothing on record to indicate that the act of the appellant had fallen under any of the explanation to Section 300 of Indian Penal Code. This is a case of direct evidence. The substantive evidence of the complainant PW-2 coupled with the evidence of PW-1 would be sufficient to hold that the accused-appellant is the author of the injury sustained by the complainant. There is nothing on record to indicate that the

appellant had any specific grudge or motive to attempt to murder the complainant. It also cannot be said that the incident had occurred on the spur of moment, since there was time for passion to cool down as the appellant had returned to the spot with a sharp weapon in order to cause the said injury.

9. In view of this, it can be safely inferred that the offence committed by the accused-appellant would fall under Section 326 of Indian Penal Code. He has undergone the whole of the sentence i.e. five years in jail.

10 It would be difficult to part with the judgment without appreciating the efforts taken by the learned counsel, Mr. Veerdhawal Deshmukh appointed to espouse the cause of the appellant. His professional fees are quantified as per rules. Hence, the following order:

ORDER

- i) The appeal is partly allowed.
- ii) The accused-appellant is hereby acquitted of the offence

punishable under Section 307 of Indian Penal Code.

iii) The accused-appellant is convicted of the offence punishable under Section 326 of Indian and sentenced to the period already undergone.

iv) The sentence of fine is maintained.

v) Professional fees are quantified as per rules to be paid to the learned counsel appointed, Mr. Deshmukh by the High Court Legal Aid Services Committee, within three months.

(*Smt. Sadhana S. Jadhav, J*)