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

CRIMINAL APPEAL No. 292 OF 2016

Mogallappa Pentappa Komadi)
Resident of Jai Ambe Nagar,)
Mankhurd Link Road,)
Mumbai)
(At present lodged in Nashik)
Road Central Prison, Nashik))...Appellant

Versus

The State of Maharashtra,)
(Through Tilak Nagar Police)
Station, Mumbai))...Respondent

Ms. Nasreen S.K. Ayubi for the Appellant
Mr. Y.M. Nakhwa-APP for the State

CORAM : SMT.SADHANA S. JADHAV, J.

DATE : JANUARY 28, 2019

JUDGMENT:

1. The Appellant herein is convicted for the offence punishable under Section 307 r/w. 34 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for seven years by the Additional Sessions Judge, CR. No.29, Greater Mumbai vide judgment and order dated 26th September, 2014 in Sessions Case No. 354/2012 and 458/2012. Hence, this appeal. Such of the facts necessary for

decision of the appeal are as follows.

2. One Ussappa Sankole , the father of Prabhu was the head of the community i.e. Puriyajang Community (Telugu). It is alleged that the accused including Babu and Shivaji were abusing Prabhu on the said ground, hence, there was animosity between two groups. It is alleged that on 12th January, 2012, at about 7.00 p.m., the present Appellant along with Babu and others had abused the father of the Complainant. There was verbal altercation which had turned violent. Accused Shivaji had assaulted the complainant Prabhu with kicks and fist blows. In the said altercation, the present Appellant along with Karappa had held the hands of Prabhu and, thereafter, Babu had caused injury to the victim by inflicting a knife blow on his chest, he had sustained grievous injuries and was taken to the hospital. On the basis of the report of Prabhu, Crime No. 7 of 2012 was registered against accused for the offence punishable under Section 307 r/w. 34 of the Indian Penal Code and under Section 323 and 504 of the Indian Penal Code.

3. Perused the evidence, it appears that the whole conviction

rests on the evidence of the three witnesses out of seven.

4. PW1 Prabhu Sankole is the victim himself. PW1 has deposed before the Court that his father was the head of the community, which was disliked by the accused persons and on the date of incident, they had all gathered in the neighborhood, at that time, Babu had taken charge of the first informant and his father and raised loud quarrel. That on 12th January, 2012, when he was standing in front of his house, at about 7.00 p.m., the present Appellant along with others had abused the father of the PW1 in filthy language. Before the victim could realize what had happened, Babu had stabbed him with a knife on his back, chest, above hips. The accused had then thrown PW1 on the ground and all the borrowers, who intended to prosecute the present Appellant, were also present. The prosecution examined as many as seven witnesses to bring home the guilt of the accused. The FIR was read over by the police officer. After completion of the investigation, the charge-sheet was filed.

5. PW1, the injured himself has denied the suggestion that all the three friends were under the influenced of alcohol. In fact, it

was a grievous injury. Although, it is an allegation that such quarrel used to take place intermittently, there is no iota of evidence to indicate that PW2 is the perpetrator of the crime. The unfortunate victim has categorically stated that he knew the accused persons. In the evening, they had been brought for having tea. The witness PW1 has deposed in consonance with the first information lodged by him below Exhibit 30. The victim himself is the best witness to prove the presence of the accused at the spot, that the incident had occurred on a spur of the moment. The verbal altercation had taken an ugly turn, the accused No.1 had stabbed the victim by a knife.

6. The learned counsel for the Appellant has drawn the attention of this Court to the medical papers which clearly indicate that the victim had been admitted in municipal hospital. He was then operated. It appears that the victim was initially taken to Rajawadi Hospital and, thereafter, he was taken to a private surgeon.

7. The recovery at the instance of the accused would show that the knife was of steel and was concealed on the roof top. The

defence of the accused is total denial, although he has stated that he had disclosed the incident in the hospital immediately.

8. Perused the medical case papers, which would indicate that the victim had to undergo operation. Perforating injury was deep. PW3 had accompanied the victim and his father to Rajawadi Hospital and in fact, the victim was under the influence of alcohol. The learned counsel further submits that the Appellant has been in custody for about four years. He was on bail during trial and has undergone 4 and ½ years of actual imprisonment.

9. Taking into consideration the facts of the case, imposition of a sentence of five years would meet the ends of justice. Hence, the following order:

ORDER

- (i) In view of this, the appeal is partly allowed and stands disposed of .
- (ii) The sentence awarded by the Additional Sessions Judge, CR. No.29, Greater Mumbai vide judgment and order dated 26th September, 2014 in Sessions Case No. 354/2012 and 458/2012 for the offence punishable under Section 307 is upheld. The Applicant shall undergo five years of rigorous

imprisonment.

- (iii) The Learned counsel appointed for the Appellant has put in the best of her efforts to espouse the cause of the Appellant, hence, she is entitled for her professional fees as per Rules, to be paid by High Court Legal Aid Committee.

[SMT.SADHANA S. JADHAV, J.]

V.A. Tikam