

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

CRIMINAL APPEAL NO. 365 OF 2013

Chakravarti @ Chakku Naganna
Walmiki
Age : 26 years, Occ. : Labourer,
Residing at Plot No. 20/D/7,
Baiganwadi Road No. 10 and 11,
Govandi, Mumbai – 400 043

.... Appellant
(Original Accused)

Vs.

The State of Maharashtra
(at the instance of Shivaji Nagar
Police Station)

.... Respondent
(Ori. Complainant)

None for the Appellant.

Mr. S.S. Pednekar, APP for the State- Respondent.

Coram : Smt. Sadhana S. Jadhav, J.

Date : 8th April 2019

JUDGMENT :-

1 None for the Appellant. Heard the learned APP.

2 The appellant hereinabove is convicted by the learned
Adhoc Additional Sessions Judge, Sewree, Mumbai vide judgment and

order dated 20th November 2012 for the offence punishable under Section 324 of Indian Penal Code and sentenced to suffer rigorous imprisonment for six months and to pay a fine of Rs.1,000/- in default to suffer simple imprisonment for 15 days.

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

On 29th January 2012 Mr. Momin Farhan (PW-3) was taken to Shatabdi Hosptal in an injured condition. Thereafter his statement was recorded by the Police. He had disclosed to the Police that the present appellant and his colleague were demanding articles from his shop without any charge and on his refusal to oblige, he was assaulted by the appellant and the co-accused on 29th January 2012 at about 4.00 to 5.00 pm. and that he had sustained bleeding injuries. On the basis of his statement, Crime number 36 of 2012 was recorded at Shivaji Nagar Police Station against the appellant/accused for the offences punishable under Sections 307, 326, 324, 452, 427, 504,

506(II) read with 34 of Indian Penal Code. Except Section 324 of Indian Penal Code, the appellant has been acquitted of all the charges levelled against him.

4 The case rests upon the evidence of PW-3, the injured – Momin Gurfan Hafizul, PW-4, his brother Momin Farhan Hafizul, PW1, Dr. Anilkumar Bhimrao Gondhale and PW-2, Dr. Amit Chakraborty.

5 The prosecution has examined as many as eight witnesses to bring home guilt of the accused. PW-3, the complainant has deposed before the Court that he runs Mobile Shop by name 'Farhan Telecom', Prior to 29th January 2012, there was a quarrel between himself and accused Parvez, who had broken his shop, since the PW-3 had refused to oblige him. On 29th January 2012, four persons had been to his shop. Parvez and Mohammed are juvenile in conflict with law. It is alleged that the present appellant had demanded money from him. He

refused to oblige because there was no business on that day. Being annoyed, the appellant had started abusing him and brought rod and assaulted the complainant on his head. Blood was oozing from the said head injury. Thereafter co-accused Nitin Chavan had assaulted the complainant by means of bamboo. His brother Momin Farhan was then approached by all the four accused and he was also assaulted by Nitin Chavan. Thereafter they had fled from the spot.

6 The injured had rushed to Shivaji Nagar Police Station, however, the Police referred him to Shatabdi Hospital and he was given treatment. PW-3, Momin Gurfan has proved contents of the F.I.R., which is marked at Exhibit 23. It is admitted by PW-3 that he had not disclosed the name of Nitin Chavan at the time of lodging of F.I.R. and his supplementary statement was recorded. After the arrest of Nitin Chavan, he had learnt about his name. In any case, Nitin has been acquitted. It is admitted by the witness that he had not disclosed to the Doctor the name of the assailant neither he had disclosed that

he was assaulted by 10 to 15 persons. It is also admitted that the complainant is not well-versed with Marathi language, however, his narration was reduced into writing and then his signature was obtained on it.

7 PW-4, Momin Farhan Hafizul has reiterated the story as narrated by PW-3. According to him, both the accused had assaulted him by rod and then he had also received an injury on his chest and face. According to PW-4, Parvez had caught hold of PW-3 and both the accused had mounted assault on PW-3. His brother Irfan had taken him to Sion Hospital, whereas PW-3 was carried to Shatabdi Hospital. It is admitted that he does not know the full name of the present appellant. He had not given the description of the appellant while lodging the F.I.R. neither he had identified the appellant in Central Jail. It is categorically admitted that PW-3 and PW-4 were taken to different hospitals although they were injured at the hands of the accused/appellant at the same time. PW-1, Dr. Anilkumar

Gondhale had examined the complainant as he was attached to Shatabdi Hospital as a Medical Officer. He has categorically stated that the injured had sustained one injury on his person and that was C.L.W on left parietal region 5 x ½ cm. X ½ cm. The medico legal register indicated that the injured had complained of blunt trauma on chest, face and abdomen, but there were no obvious injuries. It was simple injuries.

8 PW-2, Dr. Amit Chakraborty was attached to Sion Hospital on 29th January 2012. He had examined PW-4 Farhan on 30th January 2012 and noticed that PW-4 had sustained friction abrasions 2 cm. at chin and 2 cm./1 cm. over left knee. It is admitted in the cross-examination that in the injury certificate, which is at Exhibit 20, the Doctor has not mentioned the age, nature and object of injury. It is admitted that the patient had stated that the group of persons had assaulted him but had not disclosed the name of anybody.

9 Learned APP submits that the appellant herein has criminal antecedents. The appellant has undergone the substantive sentence of six months imposed upon him and has also undergone default sentence. The appellant/accused was known to the witnesses PW-3 and PW-4. This is a case of direct evidence. The injured was knowing the appellant/accused. The prosecution has established that the present appellant is the author of the injuries sustained by PW-3 and PW-4. Hence, the conviction of the appellant for the offence punishable under Section 324 of Indian Penal Code deserves to be sustained. The appellant has undergone the sentence of six months imposed upon him. Hence, the following order:

ORDER

- 1) The Criminal Appeal stands dismissed.

(Smt. Sadhana S. Jadhav, J.)