

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

**CRIMINAL APPEAL NO.246 OF 2016
ALONGWITH
CRIMINAL APPLICATION NO. 1125 OF 2017**

Vikrant Vilas Mane,
Age : 30 years, Occ.; Driver.
R/o : Colony No. 4, Pawananagar,
Kalewadi, Pune

.... Appellant/
Ori. Accused

Vs.

The State of Maharashtra

.... Respondent
(Original complainant)

Ms. Gayatri Gokhale, Court appointed Advocate for the Appellant.
Ms. Pallavi N. Dabholkar, APP for the State.

Coram : Smt. Sadhana S. Jadhav, J.

Date : 6th March 2019

JUDGMENT :

1 Heard the respective counsel.

2 The appellant herein is convicted vide judgment and order dated 27th October, 2015 passed by the Additional Sessions Judge, Pune, for the offences punishable under Sections 307 and 506(II) of Indian Penal Code and sentenced to suffer rigorous

imprisonment for ten years and a fine of Rs.5,000/-, in default to suffer rigorous imprisonment for one month and sentenced to suffer rigorous imprisonment for five years and fine of Rs.1,000/-, in default to suffer rigorous imprisonment for one month respectively. Being aggrieved by the said judgment and order, the appellant has preferred this appeal.

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

That the complainant, Sandip Dashrath Dherange was known to the present appellant and they worked as members of the same political party. Sandip Dashrath Dherange (PW-2) had contested the elections for Pune Municipal Corporation in the year 2012 and thereafter the relations between the appellant and the complainant Sandip Dherange had taken a bitter turn. On 14th January 2013, Sandip Dherange had lodged a report with the Police alleging therein that on that day at 11.00 am., he was in the office alongwith Jitu Joshi and Sandip Shinde, at that time the appellant entered into the office and informed the complainant that he wants

to talk to him about a private affair. Sandip was called outside his cabin and thereafter Sandip had asked the appellant to return Rs.50,000/-, which was given to him as a hand-loan. Being annoyed with the said demand, the appellant had stabbed him with a knife, one blow on his stomach and the second blow on the neck. It is alleged that Sandip had extended hand-loan of Rs.50,000/- at the time of marriage of the sister of the appellant. Sandip was rushed to Y.C.M. Hospital and was admitted there. On the basis of the said report, Crime No. 19 of 2013 was registered at Pimpri police station against the appellant for the offences punishable under Sections 307 and 506 of Indian Penal Code. After completion of investigation, charge-sheet was filed on 12th April 2013. The case was committed to the Court of Sessions and registered as Sessions Case No. 610 of 2013. The prosecution has examined as many as 10 witnesses to bring home the guilt of the accused.

4 The case rests upon the evidence of the complainant, PW-2 Sandip Dashrath Dherange, PW-4, the eye witness, Jitu Prabhakar Joshi and PW-7 Dr. Dipali Sachin Gonjari.

5 PW-1, Vaijayanti Sandip Dherange happens to be the wife of Sandip Dherange. Upon receipt of the said information, she had set the law into motion by registering the F.I.R. Needless to say that her report is based on hearsay evidence as she was not present at the scene of offence, when the incident had occurred. She has admitted in the cross-examination that her husband is associated with Maharashtra Navnirman Sena and that the present appellant was campaigning for her husband in the election. She has admitted that the office is situated on 2nd floor and when she had been to the office, she had seen her husband sitting on the platform abutting the said building.

6 PW-2 Sandip Dashrath Dherange is the injured witness has deposed before the Court that on 14th January 2013 when he was in the office alongwith Jitu Joshi and Sandip Shinde, at about 12.45 pm., the appellant had been to his office. He had requested him to talk to him about some private affair and therefore, he had asked Ganesh Garad, Mahendra Nishigandh and Babasaheb Waghmare to

leave the office. Upon seeing the accused, the complainant had demanded Rs.50,000/-, which was given to the appellant by way of the hand-loan. Soon thereafter the appellant got angry and had drawn the knife, which he had concealed in his pocket. He had stabbed PW-2. He had raised cries and thereafter the office colleagues rushed to the cabin. The appellant/accused had threatened him that if he demanded for money, he would finish him. His office colleagues had tried to intervene, however the accused had threatened them of dire consequences by brandishing his knife and thereafter the accused had fled from the spot. PW-2 had sustained bleeding injuries. He was taken to Y.C.M. Hospital from where he was referred to Aditya Birla Hospital.

7 In the cross-examination, it is elicited that the amount which was given to the appellant by way of hand-loan was borrowed by some other person. He has admitted his defeat in the elections. He could not name the sister of the accused or the time of marriage, when the loan was extended. All that can be inferred from the deposition of PW-2 is that the appellant had visited his office

soliciting to talk to him some private work and thereafter being enraged by the demand of Rs.50,000/- had assaulted/stabbed PW-2 with a knife.

8 The prosecution has examined PW-3, Babasaheb Sarjerao Waghmare, who was allegedly present in the office at the relevant time. He has resiled from the earlier statement and therefore was declared hostile.

9 PW-4 Jitu Prabhakar Joshi is the eye witness to the incident. He appears to be an employee of PW-2. He has admitted in the cross-examination that the Police had not enquired with him. He has identified the knife with which PW-2 was assaulted only after admitting that it is a common place article.

10 PW-7, Dr. Dipali Sachin Gonjari had examined PW-2 on 14th January 2013 and noticed following external injuries:

- 1 Stab injury on the right side of neck. It was measuring 5x5x5 cms. and the injury was red in colour. It was grievous injury.

- 2 Stab wound over the left upper abdomen, measuring 3x2x1 cms. and the injury was red in colour. It was simple injury.

According to her, patient was discharged on 22nd January 2013 and an injury certificate was issued on 13th February 2013. She has stated that injury no.1 was a life threatening injury and in the eventuality that the medical treatment was not provided immediately, the patient would have died. It is also stated that the size of injury is not decisive for concluding as to whether said injury is life threatening or not but it depends upon as to whether any vessel is ruptured or not. According to her, there was complete trans-section of internal jugular vein.

11 Learned counsel for the appellant submits that in fact a CCTV is installed in the said office. The same is admitted by Mr. Laxman Nivrutti Sonawane, however, the CCTV footage is not produced on record as it was not seized. Learned counsel vehemently submits that the appellant has been falsely implicated and the story is concocted. To buttress her submissions, she has

stated that it cannot be believed that when the appellant went to the office of the complainant, the complainant would demand Rs.50,000/-. In fact the appellant according to her would not have gone into the office of the complainant where he would be owing money to the complainant.

12 There is no test identification parade conducted to substantiate the presence of the accused in the office of the complainant at the relevant time. The installation of CCTV footage is writ large in the scene of offence panchanama also and yet the CCTV footage was neither taken by the investigating agency and therefore not produced on record. It is also submitted that no charge is framed for criminal trespass and that the first information report has been lodged only to satisfy the personal vendetta of the complainant.

13 Be that as it may, the prosecution has relied upon the evidence of the complainant and the learned APP submits that the present case is one of the direct evidence. The injured himself is an eye witness and therefore the fact that the CCTV footage was not

collected would be of no significance. The ocular evidence would prevail upon any other evidence. In the present case, it is pertinent to note that the appellant has entered into the witness box and has examined himself as a defence witness. According to the accused, DW-1, the appellant could not have been present in the office of the complainant at the relevant time as he was admitted in Y.C.M., Hospital on the same day i.e. on 14th January 2013 as he had met with an accident.

14 It is further pertinent to note that the accused had not placed on record any documents to even remotely indicate that he had taken any kind of treatment at Y.C.M. Hospital on 14th January 2013. On record there is only an application filed by the appellant, seeking the medical certificate from Y.C.M. Hospital. In fact the accused could have placed on record his discharge card or any other prescription to substantiate his plea of alibi. The learned Sessions Judge has rightly refused to place any reliance on the evidence of DW-1 and has rightly convicted the appellant for the offence punishable under Section 307 of Indian Penal Code. The injuries

sustained by PW-2 were such that in the ordinary course of nature, without medical treatment the injuries were likely to cause death and since the injured is survived, the appellant has been convicted for the offence punishable under Section 307 of Indian Penal Code.

15 Learned counsel for the appellant has pointed out several lapses on the part of the investigating agency and has submitted that there is suppression of genesis of the offence and therefore, the appellant deserves to be acquitted.

16 The Hon'ble Apex Court in the case of State of Karnataka Vs. K. Yarappa Reddy, reported in 1999 Supp. (3) SCR 359 in has observed as follows :

“If the other evidence, on scrutiny, is found credible and acceptable, should the court be influenced by the machinations demonstrated by the Investigating Officer in conducting investigation or in preparing the records so scrupulously. It can be a guiding principle that as investigation is not the solitary area for judicial scrutiny in a criminal trial, the conclusion of the court in the case cannot be allowed to depend solely on the probity of investigation. It is well nigh settled that even if the investigation is illegal or even suspicious the rest of

evidence must be scrutinized independently of the impact of it. Otherwise criminal trial will plummet to that level of the investigating officers ruling the roost. The Court must have predominance and pre-eminence in criminal trials over the action taken by investigating officers. Criminal justice should not be made the causally for the wrongs committed by the investigating officers in the case. In other words, if the court is convinced that the testimony of a witness to the occurrence is true, the Court is free to act on it albeit investigating officer's suspicious role in the case”.

17 In the present case, there is neither reason nor scope to suspect the veracity and the genuineness of the incident and the role of the appellant in the said incident. It is true that the possibility of suppression to the incident may not be as narrated by the injured, however, the fact remains that the prosecution has proved that the appellant herein happens to be the author of the injuries sustained by PW-2. This also has to be read in light of the fact that the appellant has raised false plea of alibi, especially when he could not substantiate his contentions, it cannot be believed that he had no material to show or demonstrate that he was in the same hospital prior to the occurrence of the said incident, or his failure when show

to that by all means, he could not have been present at the scene of offence on that day at the relevant time.

18 It is, in these circumstances that the conviction of the appellant for the offence punishable under Sections 307 and 506 (II) needs to be upheld. It is true that the appellant has been in custody since 14th January 2013 and has undergone 6 years of the substantive sentence. Since this Court is of the opinion that the prosecution has suppressed the genesis of the incident and has not been able to substantiate the prelude to the incident, the appellant deserves to be acquitted for the offence punishable under Section 506 of Indian Penal Code. Hence, the following order :

ORDER

- (I) The appeal is partly allowed.
- (II) The appellant is hereby acquitted of the offence punishable under Section 506(II) of Indian Penal Code.
- (III) The conviction of the appellant for the offence punishable under Section 307 of Indian Penal Code is upheld, however, he is sentenced to the period already undergone.

(IV) The sentence of fine is maintained.

(V) The appellant be released forthwith, if not required in any other offence.

(VI) In view of disposal of the Appeal, the Criminal Application filed under Section 389 of Cr.P.C. stands disposed of.

(VII) The learned Advocate, Ms.Gayatri Gokhale was appointed in the present matter to espouse the cause of the appellant as it happens to be an appeal filed by the appellant, who is in custody. She has put in her best efforts to espouse the cause of the appellant. Hence, her professional fees are quantified as per rule to be paid to her by High Court Legal Aid Services Committee, Mumbai.

(Smt. Sadhana S. Jadhav, J)