

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

**CRIMINAL APPEAL NO.466 OF 2013**

Santosh Govind Kumavat  
Age : 23 years, Occ.: Labourer,  
R/at, S. No. 203, Dangat Vasti,  
17 ½ Nali, Hadpsar, Pune

.... Appellant  
(Ori. Accused no.1)

Vs.

The State of Maharashtra  
Hadapsar Police Station, Pune

.... Respondent

Mr. Veerdhawal Deshmukh Court appointed Advocate for the  
Appellant.

Mr. S.R. Agarkar, APP for the State.

**Coram : Smt. Sadhana S. Jadhav, J.  
Date : 3<sup>rd</sup> June 2019**

**JUDGMENT :**

1. Heard the learned counsel for the parties.
2. The appellant herein is convicted for the offence punishable under Section 307 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for seven years and fine of Rs.1,000/-, in default, rigorous imprisonment for three months by the learned Additional Sessions Judge, Pune vide judgment and order

dated 23<sup>rd</sup> November, 2011 in Sessions Case No.39 of 2010. Hence, this appeal.

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

The accused-appellant is residing in the neighbourhood of the complainant Sandip Lonkar i.e. P.W. 1. The distance between both the houses is 8 to 10 feet. It is the case of the prosecution that the appellant herein used to park his bicycle in front of the house of the complainant and due to that there used to intermittent quarrels between the complainant and the appellant. The complainant was auto rickshaw driver. On 30<sup>th</sup> November 2009 at about 11.30 am., the complainant had reached home. While he was about to enter the house, the appellant had assaulted him on his head. In order to save himself, he put his hand on his head, the second blow had fallen on his finger. According to PW-1, while he was trying to flee, the appellant had inflicted third blow on his back. In short, according to the complainant, the appellant had caused three grievous injuries on his person over a trifling quarrel. The medical certificate (Exhibit 31) shows that the complainant had sustained about eight injuries. The medical certificate further indicates that the fracture on middle

pharynx of left middle finger and right parietal region as well as amputation of ring finger are grievous injuries whereas the incise injury on the right parietal region admeasuring 10 x 2 x 2 cm. is simple in nature. The complainant was taken to the hospital and remained indoor patient for five days. At the time of admission, the complainant had not named the accused -appellant as the author of the injuries sustained by him. P.W.2-Dr. Suresh Laxman Dabadgaonkar has proved the injury certificate (Exhibit 31). However, he has categorically stated that he would not be in a position to state as to whether the injuries sustained by the complainant would be sufficient in the ordinary course of nature to cause death.

4. Upon perusal of F.I.R., which is at Exhibit 27, it would be clear that the complainant has not deposed before the Court in consonance with the F.I.R. but he has proceeded to state that the contents of the F.I.R., which was readover to him are correct.

5. In view of this admission, this Court has perused the F.I.R. It appears that the first information report was recoded by P.S.I. of Hadapsar police station in presence of the Doctor, which bears the

endorsement of P.W. 2 that the patient is conscious and oriented to give statement. The first informant has stated that on 30<sup>th</sup> November 2009, the accused was parking his bicycle in front of house of the complainant. At that juncture, the complainant asked him not to park bicycle at that place. The accused did not pay any heed to his request and parked the bicycle in front of his house. The complainant was about to dislodge the bicycle from the said place, at that time, the appellant came on the spot alongwith his father Govind Kumavat (acquitted accused). They started abusing him. The altercation had taken a serious turn. He had gone to his house and returned with a sickle in his hand. He abused him and was about to assault him on his head, he had put his hand forward and the assault had landed upon his little finger and in the same course, the other two fingers had got injured. The complainant has further stated that at the relevant time, the father of accused Govind Kumavat had caught hold of the complainant in order to facilitate assault by the appellant.

6. The prosecution also placed implicit reliance upon evidence of PW 3- Smt. Sitabai Laxman Tupe, who happens to be an eye witness to the incident. PW-3 has deposed before the Court that

on 30<sup>th</sup> November 2009, she had told the appellant not to park bicycle in front of her house as it was difficult for her to go through the road. The records would show that she happens to be grandmother of the complainant. According to her, there was verbal altercation in between the complainant and the accused-appellant. In the meanwhile, the father of Santosh had handed over a sickle to Santosh and told to cut hands and legs of Sandip, so that problem would be solved forever and it was only thereafter the accused Santosh had assaulted Sandip. She has seen that the finger of Sandip was cut and upon seeing blood, she had fallen unconscious. The eye witness in the present case has narrated a different story altogether. The deposition of the complainant is not corroborated by PW-3.

7. Learned counsel for the appellant has vehemently argued that there is suppression of the genesis of the incident. It is also submitted that although there is no suggestion in the cross-examination, the very fact that the contents of Exhibit 27 are proved by the witness, it would show that there was an initial altercation and that the accused-appellant had assaulted the complainant in the course of the altercation and there was no intention on the part of

the appellant to cause such injury to the complainant as would result into his death and therefore according to the learned counsel for the appellant, the appellant would at the most be liable to be punished for an offence punishable under Section 325 of Indian Penal Code.

8           It is pertinent to note that in the present case, the father of the appellant has been acquitted although there is clear evidence that he handed over sickle to the appellant and asked him to cut hands and legs of the complainant. The original accused no.2 had not only exhorted the appellant to cause injury, but he also aided and abetted the accused to assault the complainant. Despite that, only because he has not caused any injury, the original accused no.2 has been acquitted by the Sessions Court. The Court has overlooked the evidence brought on record which indicates father and son had shared common intention.

9           Learned counsel for the appellant submits that the appellant ought to have been acquitted with the aid of Section 34 of the Indian Penal Code, which reads as follows :

**“34. Acts done by several persons in furtherance of common intention.—**When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

As against this, learned APP submits that in the cross-examination, no suggestion is given to the complainant that there is a contradiction in the version given in the F.I.R. and the deposition and therefore the appellant neither deserves lesser punishment nor deserves to be acquitted with the aid of benefit of doubt as has been prayed by the learned counsel for the appellant. The learned counsel for the appellant further submits that the appellant was hardly 20 years old at the time of the incident and therefore deserves leniency. In all probabilities, the appellant has undergone whole of the sentence.

10. In view of above discussion, the appellant deserves to be convicted for the offence punishable under Section 325 of Indian Penal Code and sentenced to the period already undergone

11. This Court has appointed learned counsel, Mr. Veerdhawal Deshmukh to espouse the cause of the appellant, as none appeared for the appellant, when the matter was called. The appeal

is of the year 2013. Learned counsel appointed for the appellant has put in best of his efforts to espouse cause of the appellant and his professional fees are quantified as per rules to be paid by High Court Legal Aid Committee, preferably within three months. Hence, the following order:

O R D E R

- I) The appeal is partly allowed.
- II) The conviction of the appellant for the offence punishable under Section 307 of Indian Penal Code is hereby quashed and set aside.
- III) The appellant is hereby convicted for the offence punishable under Section 325 of Indian Penal Code and sentenced to the period already undergone.
- IV) The sentence of fine is maintained.

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