

Anand

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

CRIMINAL APPEAL NO. 577 OF 2014

Dharmesh Giridhar Parmar .Appellant
Age : 21 yrs, Occu : service
R/at Kailas Bhavan,
Room No. 2, Pachpayari,
Virar (E),
Mumbai.

(Presently lodged at Thane Prison)

Vs.

1. The State of Maharashtra .Respondents
(At the instance of Virar Police
Station, District – Thane)
2. Ms Khushbu Ashwin Vira
3. Mrs. Sushila Kalyanji Vira
Both, R/at
Room No. A-302, 3rd floor,
Ravisa Apartment, Virat Nagar,
Virar (W),
Thane – 401 303.

Ms Sonal Parab a/w Mr. P. K. Sanghrajka i/b. Rajeev Sawant &
Associates, Advocate, for the Appellant
Mr. S. V. Gavand, APP, for the Respondent No. 1 – State

CORAM : REVATI MOHITE DERE, J.

DATE : 11.04.2019

ORAL JUDGMENT

. By this Appeal, the Appellant has impugned the Judgment and Order dated 13.02.2014 passed by the learned Additional Sessions Judge, Vasai in S. C. No. 55 of 2013, convicting and sentencing him as under :-

- for the offence punishable under Section 307 of the Indian Penal Code, to suffer R. I. for seven years and to pay fine of Rs. 5,000/-, in default to suffer S. I. for six months;

- for the offence punishable under Section 326 of the Indian Penal Code, to suffer R. I. for five years and to pay fine of Rs. 5,000/-, in default to suffer S. I. for six months;

- for the offence punishable under Section 452 of the Indian Penal Code, to suffer R. I. for three years and to pay fine of Rs. 5,000/-, in default to suffer S. I. for six months.

The Appellant was further directed to pay

compensation of Rs. 25,000/- to PW.1 – Ms Khusbu Vira (informant) and Rs. 75,000/- to PW.2 - Mrs. Sushila Vira i. e. the injured witness.

2. The prosecution case in brief is as under :-

On 15.03.2013 at about 5.30 p. m., the Appellant entered PW.1 – Khusbu Vira's house and assaulted her with a cutter on the neck. When PW.2 – Sushila Vira (grand mother of PW.1) tried to rescue PW.1 – Khusbu, the Appellant also assaulted PW.2 – Sushila with a cutter. After the assault, the Appellant fled from the spot. Thereafter, the injured were taken to Sanjivani Hospital and from there to Umrao Hospital. On the same day, PW.1 – Khusbu lodged an FIR / complaint with the Virar Police Station, alleging offences punishable under Sections 307, 326 & 452 of the Indian Penal Code and the Appellant was arrested soon thereafter. When the Appellant was arrested, his clothes were blood stained, pursuant to which, his clothes were seized under a panchanama. After investigation, charge-sheet was filed as against the Appellant in the Court of the learned J. M. F.

C., Vasai. Since the offences were Sessions triable, the case was committed to the Court of Sessions for trial.

3. The learned Sessions Judge framed charge as against the Appellant for the offences punishable under Sections 307, 326 & 452 of the Indian Penal Code, to which the Appellant pleaded not guilty and claimed to be tried.

4. The prosecution in support of its case examined ten witnesses i. e. both the injured (PW.1 – Khusbu and PW.2 – Sushila), four Doctors, who treated PW.1 – Khusbu and PW.2 – Sushila, the panchas to the spot panchanama, arrest panchanama and the Investigating Officer.

5. The defence of the Appellant was that of total denial and false implication. According to the Appellant, PW.1 – Khusbu was madly in love with him and wanted to get married, however, he would tell her, that they should get married, after he settled in life. It is the Appellant's case, that out of frustration, she attempted to commit suicide by slitting her neck. According to the

Appellant, when PW.2 – Sushila (grand mother of PW.1) went to stop her from inflicting any injury, PW.1 – Khusbu pushed her, as a result of which PW.2 – Sushila sustained injuries.

6. The learned Sessions Judge after considering the evidence on record was pleased to convict the Appellant for the offences as stated aforesaid in para 1.

7. Learned counsel for the Appellant submits that the Appellant has been falsely implicated in the said case. She submits that a perusal of the Medical case papers of Umrao Hospital shows that the history given was of alleged assault by an unknown person with a cutter i. e. knife. She submitted that it is only as an after thought that the Appellant has been falsely implicated in the said case, as the Appellant was asking PW.1 – Khusbu, for time to settle down before they got married. According to the learned counsel, the injuries sustained by PW.1 – Khusbu are self inflicted injuries and that PW.2 sustained injuries, when she intervened and tried to stop PW.1 – Khusbu from causing injuries to herself. She further submitted that the evidence on record is not sufficient

to show the complicity of the Appellant, inasmuch as, no independent witness has been examined in the said case. She further submitted that no witness, who had seen the Appellant escaping from the spot, has been examined nor any CCTV footage was produced to show the presence of the Appellant at the spot.

8. Learned APP supported the impugned Judgment and Order and submitted that no interference is warranted in the same.

9. Heard learned counsel for the parties at length and perused the evidence and documents on record, with their assistance.

10. A perusal of the evidence of PW.1 – Khusbu shows, that she and the Appellant were good friends. There are photographs on record, which fortify the said fact. PW.1 – Khusbu in her evidence has stated that she was residing with her parents and grandmother at Virar. According to PW.1 – Khusbu, the incident took place on 15.03.2013 at about 5.30 p. m. She has

stated that somebody rang the door bell; that she and her grandmother were at home; that when she opened the main door, she could not see anyone and hence, opened the safety door and saw the Appellant; that when she attempted to close the safety door, he pulled the same and came in; that the Appellant had a cutter with him; that the Appellant assaulted her with a cutter on her neck (front & back), as a result of which, she sustained three injuries on the front side of the neck and four injuries on the back of the neck; that when her grandmother (PW.2) came to rescue her, the Appellant assaulted PW.2 – Sushila on her left arm and left wrist; that when they started shouting, the Appellant fled from the house; that her mother and residents of the building took her and her grandmother (PW.2 – Sushila) to Sanjivani Hospital, where they were there for about two hours; that they were, thereafter, shifted to Umrao Hospital at Mira Road; and that the police had come to Sanjivani Hospital and recorded her statement at the hospital, which was treated as an FIR (Exh.8). PW.1 – Khusbu has admitted that she knew the Appellant and that they were friends. In her examination-in-chief, PW.1 – Khusbu has stated that the Appellant had proposed to her and as she had

refused the said proposal, the Appellant assaulted her. She identified the cutter with which she was assaulted as well as the clothes which were worn by her, at the time of the incident.

11. The tenor of the cross-examination of PW.1 – Khusbu is to show that she had accompanied the Appellant to different places and had even attended the Appellant's sister's marriage. PW.1 – Khusbu has admitted all the photographs which were tendered by the Appellant's Advocate (Article 'B' collectively). PW.1 – Khusbu has, however, denied the suggestion that, she was madly in love with the Appellant and wanted to marry him and that since the Appellant was asking her for time to settle down, she, out of frustration, tried to end her life by causing injury to herself and that when her grand mother (PW.2) tried to stop her from inflicting injury on herself, she pushed her and in the process, PW.2 – Sushila sustained injuries.

12. From a perusal of PW.1 – Khusbu's evidence, it is evident that the Appellant and PW.1 – Khusbu knew each other well and would go out together. The same is evident from the

photographs produced on record. The incident which took place on 15.03.2013 and as deposed to by PW.1 – Khusbu is corroborated by PW.2 – Sushila, her grandmother, on all material aspects. Admittedly, the Appellant was not known to PW.2 – Sushila prior to the date of incident. The aforesaid evidence of assault is duly corroborated by the Doctors, who have been examined by the prosecution. PW.4 – Dr. Sandesh Gangadharrao Misale was working as a Casualty Medical Officer in Sanjivani Hospital at the relevant time, when PW.1 – Khusbu and PW.2 – Sushila were admitted. PW.4 – Dr. Misale examined PW.1 – Khusbu and PW.2 – Sushila and found the following injuries on them; on PW.1 – Khusbu he found an injury on her neck, measuring 12 x 4 x 4 cms; another C. L. W. over posterior side of head lower down in occipital region measuring 15 x 5 x 5 and C. L. W. on anterior part of neck laterally left side 2 x 1 x 1 cms and 3 x 1 x 1 cm; C. L. W. over the anterior side of neck 2 x 1 x 1 cm; and a C. L. W. over right thumb lateral 2 x 1 x 1 cm. He has stated that the said injuries were grievous in nature. Accordingly, PW.4 – Dr. Misale issued Injury Certificate which is at Exh.18. He has further stated that at about 6.45 p. m., he discharged PW.1 –

Khusbu for further medical treatment and advised her further medical treatment in another hospital. After giving primary treatment to PW.1 – Khusbu, PW.4 – Dr. Misale examined PW.2 – Sushila, aged about 65 years and found C. L. W. over left arm admeasuring 5 x 1.5 x 1 cm; C. L. W. over left hand wrist joint front side 4 x 1 x 1.5 cm; and an injury to the radial artery. All the injuries were stated to be grievous in nature, caused by a sharp instrument. PW.4 – Dr. Misale issued Injury Certificate (Exh.19) and advised further treatment. The history given by PW.1 – Khusbu and PW.2 – Sushila to Dr. Misale was that the injury by a sharp instrument.

13. Dr. Vikas Kumar, a Plastic Surgeon attached to Umrao Hospital and who treated PW.2 – Sushila, was examined as PW.5. He has stated that PW.2 – Sushila was admitted in the hospital on 15.03.2013 and was under observation; that PW.2 – Sushila gave history of assault on her upper limbs at 6.00 p. m. on 15.03.2013 at her residence; that the patient was treated at Sanjivani Hospital and then referred to Umrao Hospital; and that PW.2 – Sushila had injuries which were bone deep and the said injuries were operated

by him on 16.03.2013. He has stated that the main artery, tendons and nerves were cut and they were required to be sutured; and that the patient had blood loss and after operation, she was in ICU for several days. According to PW.5 – Dr. Kumar, because of blood loss, the patient had kidney problem and had to undergo dialysis and as such, the patient was discharged from the hospital after about 25 days. The summary of treatment issued by him and co-doctor – Mahesh Prasad is at Exh. 25. According to PW.5 – Dr. Kumar, the injury of PW.2 – Sushila was grievous in nature and that if she was not operated in time, she would have lost her life.

14. PW.6 – Dr. Sadaf Khan, attached to Umrao Hospital as a Medical officer has produced the Certificate issued by the hospital i. e. the Certificate dated 16.03.2013 of PW.2 – Sushila and Certificate dated 18.03.2013 of PW.1 - Khusbu. He has identified the said Certificates signed by him which are at Exh. 27 and Exh. 28 respectively. PW.2 – Sushila's Medical Certificate reads as under :-

“ TO WHOMSOEVER IT MAY CONCERN

This is to certify that Mrs. Sushila Kalyanji Vira, Age 64 yrs, Sex Female with UHMR No. 42372 and IP No. 11170 was brought to the emergency of Umrao Hospitals referred from Sanjivani Hospital, Virar with the alleged history of assault on 15.03.2013, the patient had alleged H/o trauma to left upper limb at home lacerated wound with left ulnar nerve, ulnar artery injury with flex or tendon injury. The patient is admitted under care of Dr. Vikas Kumar on 15.03.2013. The MLC of the patient was done in Sanjivani Hospital, Virar.”

PW.1 – Khusbu's Medical Certificate reads as under :-

“ TO WHOMSOEVER IT MAY CONCERN

This is to certify that Ms Khushboo Vira, Age 20 yrs, Sex Female with UHMR No. 42371 and IP No. 11169 was referred from Sanjivani Hospital, Virar and brought to the emergency of Umrao Hospitals with the alleged history of assault on 15.03.2013. The details of the injury are CLW over back of neck 10 cm x 2 cm cutting skin subcutaneous tissue, trapezius and other muscle. CLW in occipital region measure 5 cm x 2 cm extending deep till occipital bone. Small 2 cm x 1 cm cut in front of neck.

The patient was admitted under care of Dr. Vikas Kumar on 15.03.2013 and attended by Dr. Abdul Hamid (Facio Maxillary Surgeon). The MLC of the patient was done in Sanjivani Hospital, Virar.”

15. Dr. Abdul Hamid was examined by the prosecution as PW.7. PW.7 – Dr. Hamid, a Maxio Facial Surgeon was attached to Umrao Hospital at the relevant time. He has stated that on 15.03.2013 at about 10.30 p. m., he attended PW.1 – Ms Khushboo, who was admitted in the hospital. He has stated that the patient had multiple injuries over her neck and was bleeding excessively and that the injury was with a sharp object. He has further stated that there were two injuries on the back of her neck and one was extending from back to front of the neck. He has given the details of the injuries in his evidence. PW.7 – Dr. Hamid sutured the said injuries. He has stated that PW.1 – Khusboo was admitted in the hospital for about five days. According to him, all the injuries were grievous in nature. The concerned medical papers were produced by him, are at Exh. 32. Although, the history mentioned in the medical case papers is

“alleged history of assault by two unknown persons”, the said reference will have to be considered in the background of the case. As noted above, the Appellant and PW.1 – Khusbu were good friends. It appears that when PW.1 – Khusbu refused to marry the Appellant, the Appellant went to PW.1 – Khusbu's house and assaulted her and her grandmother, when she intervened. Nothing is elicited in the cross-examination of PW.1 – Khusbu and PW.2 – Sushila to disbelieve their testimonies that the Appellant came on 15.03.2013 at 5.30 p. m. and assaulted PW.1 with a cutter and when PW.2 intervened, the Appellant also assaulted PW.2. The evidence of assault is further corroborated by the finding of blood stains (of PW.1 – Khusbu and PW.2 – Sushila), on the Appellant's clothes. The C. A. Report shows that the blood group of PW.1 – Khusbu is “B” and the blood group of PW.2 – Sushila is “O”. (The Appellant was arrested on 15.03.2013 with blood stained clothes on his person). The clothes of the Appellant were seized under a panchanama and the C. A. Report shows that the shirt of the Appellant had blood stains of both blood groups i. e. “B” as well as “O” i. e. of PW.1 – Khusbu and PW.2 - Sushila. PW.4 – Dr. Misale has specifically

stated that he has seen an injury on the Appellant's finger, however, there is no cross-examination of this witness on this aspect. It appears that the Appellant had sustained an injury on his finger during the assault. It also appears from the evidence on record, that the cutter with which the Appellant assaulted PW.1 – Khusbu and PW.2 – Sushila, was found in the pant pocket of the Appellant at the time of his arrest and that it was stained with blood. Although, the C. A. Report shows that the blood group found on the cutter is inconclusive, the fact remains that the cutter was found in the Appellant's pant pocket, when he was arrested and that it was human blood. As far as the defence of the Appellant is concerned, that the injuries sustained by PW.1 – Khusbu were self inflicted injuries, the same is noted only to be rejected. The injuries sustained by PW.1 – Khusbu were not only on the front of the neck but also on the back of the neck. It is impossible for any person to inflict injuries on the back. In fact, PW.7 – Dr. Hamid, who treated PW.1 – Khusbu has specifically stated that the injuries on the back side of the neck cannot be self inflicted. Considering the evidence on record, both, ocular as well as medical, it is well established that it is the Appellant, who

caused the injuries to both, PW.1 – Khusbu and PW.2 – Sushila.

16. Considering the material on record, no interference is warranted in the impugned Judgment and Order. Accordingly, the Appeal is dismissed.

(REVATI MOHITE DERE, J.)