

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

CRIMINAL APPEAL NO.683 OF 2006

Sandip @ Baba Laxman Jagde	)....Appellant
V/s.	
The State of Maharashtra	)
At the instance of Sahakar Nagar Police	)
Station, Pune	)....Respondent

Mr.Abhaykumar Apte for the appellant.
Ms.S.V.Sonawane APP for the respondent-State.

**CORAM : K.R.SHRIRAM,J
DATE : 6.5.2019**

P.C.:-

1. This appeal has been filed impugning an order of conviction dated 8.6.2006 whereby the appellant has been held guilty of offence punishable under Section 323 of the Indian Penal Code. The appellant was sentenced to suffer simple imprisonment for one month and to pay fine of Rs.1000/- and in default of fine, he was to undergo further simple imprisonment for one month.

2. The appellant herein is an accused in a case registered at Sahakar Nagar Police station, Pune vide Crime registered no.302 of 2005 and the appellant came to be arrested along with 9 other

persons. All were tried together by the learned 14th Adhoc Additional Sessions Judge, Pune after framing charge for the offences punishable under Sections 143, 147, 148, 307 r/w section 149, 307, r/w section 34 of the Indian Penal Code, under section 37(1) r/w section 135 of the Bombay Police Act and under section 4 r/w section 25 of the Arms Act, as alleged by the prosecution.

3. It is the prosecution's case that on 5.8.2005 at 9.30 p.m. the complainant and one Sunil Bibwe were going through a particular road. At that time, all the accused were passing from there and on seeing the complainant and Sunil Bibwe started abusing them. It seems Baba Jagade, the appellant, slapped Sunil Bibwe and when asked the reason for slapping all the accused started beating the complainant and Sunil and rained punches and kicks on them. It is also stated that Baba Jagade (appellant) inflicted a knife wound on Sunil. When they saw, Sunil was bleeding, all the accused ran away. The complainant thereafter took Sunil to Dr.Rao's hospital for treatment. Based on that, complaint was registered in the Sahakar Nagar Police station charging the accused for offences as mentioned earlier.

4. There were totally 10 accused, the 1st of which is Sandip @

Baba Laxman Jagade, the appellant, who it is alleged has knifed Sunil.

5. To bring home the guilt of the accused, the prosecution examined totally 11 witnesses. The prosecution also relied, inter alia , on the complaint (Exh.20) and spot panchanama (Exh.27). The prosecution also relied upon medical certificate regarding injuries sustained by Sameer Shivaji Bibwe (Exh.30), Sunil Shivaji Bibwe (Exh.29). Injury certificate of Vithal Bibwe (Exh.37), Amol Bibwe (Exh.38), panchanama (Exh.32), report submitted by PSI S.R.Patil (Exh.43) and Chemical Analysis reports at (Exhibits.45, 46 & 47).

6. The following 9 points were raised by the Court and the findings were as under :-

Points	Findings
<u>1.</u> Does prosecution prove that on 5.8.2005 at 9.30 PM in front of Jadge building, at Bhbewadi, accused nos.1 to 10 formed an unlawful assembly, the common object of which was to attempt to commit murder of Sunil Bibwe by causing grievous hurt to complllainant Chetan Sarkale and Sunil Bibwe and thereby committed an offence punishable u/s.143 of Indian Penal Code ?	In the negative
<u>2.</u> Does prosecution further prove that on 5-8-2005 at 9-30 PM in front of Jagde building, Bibewadi Pune, accused nos.1 to	In the negative

10 being the members of unlawful assembly committed rioting & thereby committed and offence punishable under Section 147 r/w 149 of IPC ?	
3. Does prosecution further prove that on 5-8-2005 at 9-30 PM in front of Jagde building at Bibwe Wadi, Pune, accused nos.1 to 10 being members of unlawful assembly committed rioting by means of deadly weapons like knife and thereby committed an offence punishable u/s.148 r/w 149 of IPC ?	In the negative.
4. Does prosecution prove that on 5-8-2005 at 9-30 PM in front of Jagde Building, at Bibwewadi, Pune accused nos.1 to 10 being members of an unlawfull assembly, in prosecution of common object of such assembly, assaulted Sunil Bibwe with such intention & knowledge and under such circumstances that if you have caused death of Sunil bibwe they would have been guilty of murder and thereby committed and offences punishable u/s.307 read with S.149 of IPC ?	In the negative
5. Or in the alternative, does prosecution prove that accused nos.1 to 10 either individually or in furtherance of their common intention assaulted complainant and Sunil Bibwe with such injuries and with knowledge and intention that such injuries were likely to cause his death & if death would have been caused, accused would have been guilty of murder and thereby committed offence punishable u/s.307 simplicitor or under Section 307 r/w 34 of Indian Penall Code ?	In the negative
6. Does prosecuton further prove that on 5-4-2005 at 9-30 PM in front of Jagde building at Bibwewadi, Pune, accused nos.1 to 10 were found in possession of	In the negative

deadly weapon llike knife etc. in contravention of prohibitory order prommologated by Police Commissioner, Pune under Section 37(1) of Bombay Police Act and thereby committed offence punishable under Section 135 of Bombay Police Act ?	
<u>7.</u> Does prosecution further prove that on 5-4-2005 at 9-30 PM in front of Jagde building at Bibwewadi, Pune accused no.1 was armed with deadly weapon like knife and thereby committed an offence punishable u/s.4 read with section 25 of Arms Act ?	In the negative
<u>8.</u> What offence is made out, and against which accused ?	Offence u/s.323 of I.P.C. is proved against Accused No.1
<u>9.</u> What order ?	As per final order.

7. Except the appellant, all other 9 accused have been acquitted.

8. Mr.Apte for the appellant stated that the Court had convicted appellant no.1 and sentenced him to suffer simple imprisonment for one month and to pay fine of Rs.1000/- and in default of payment of fine, to undergo simple imprisonment for one month. Mr.Apte stated that the fine has been paid and what remains is only one month simple imprisonment. Mr.Apte submitted that the appellant has already undergone almost 1 & ½ months of simple

imprisonment as an under trial. Mr.Apte states that the appellant who was 21 years of age then i.e., in 2005, is now about 34 years of age and is unemployed. Mr.Apte relied upon paragraph-27 of the impugned judgment in which it is recorded that it was the appellant's first offence , his father was handicapped and mother was suffering illness and being only able bodied member of the family, the entire responsibility and burden of the family is on his shoulders. The appellant also requested the Hon'ble Sessions Court to release him on probation bond.

9. Mr.Apte states that after that incident of 2005, there has been not a single complaint against the appellant. Mr.Apte also states that the appellant will also issue a good behavior bond to the concerned police station and also give a donation of Rs.10,000/- to any charitable organization, the court may direct.

10. Ms.Sonawane APP strongly opposed and states that if the Court accepts what Mr.Apte states then in every matter such a stand will be taken and all accused will be let off free. At the same time, when I asked Ms.Sonawane if the simple imprisonment is for one month and accused has already spent 1 & ½ months as under trial, why should the accused under go any further simple imprisonment. In

fairness, learned APP agreed with what the Court stated. Learned APP also, as an officer of the Court, stated that prosecution has not challenged the impugned order and over 13 years having passed, chance of challenging the impugned order will not arise. Learned APP also stated that she has no instructions about any further offence being committed by the appellant after the incident for which he was convicted.

11. Having considered the facts and circumstances of the case and after having considered provisions of section 3 of the Probation of Offenders Act 1958 (the said Act), I am of the view that instead of sentencing the accused to punishment, the accused should be released on probation of good conduct under Section 4 of the said Act.

12. The appellant is directed to be released on his entering into a bond with one surety and receive sentence when called upon during such period which will be six months and in the meantime, keep peace and good behaviour. Mr.Apte states that the accused has his fixed place of abode at Bibwevadi, Jagade building, Pune. A copy of the driving license and the Aadhar card of the appellant is scanned and reproduced here in below :-



अदीव लखंड

(अदीव लखंड लखंड)

२० सप्टेंबर २०१७, विष्णूकर्ण मंदिराजवळ

आजके वस्ती, छिछेकेवडी

पुणे, ३५



સંકીર્ણ નામ

(સંકીર્ણ નામના નામ)

જા. ૧૫૦/૨૦૧૭, વિશ્વકર્મા મેદિરા જવલ

મેલકે વસ્તી, સિલ્લે વસ્તી

પુ. ૩૯

Apeal - 683-2006

X/1/19
6/5/19



बंदीप जागडे
(बंदीप लक्ष्मण जागडे)

श्री बंदीप लक्ष्मण जागडे

स. ६५०/२/७, विश्वकर्मा भंदिरावक

पेगळे वस्ती,

बिबळेवाडी, पुणे ३७



सादीप लक्ष्मण जागदे
 (सादीप लक्ष्मण जागदे)
 रा. ८५०/२०१७, दिक्षक र्ग मेलिग जवळ
 पोळोळे पयली, विठ्ठलवाडी
 पुणे - ४१०

13. The appellant shall also give donation of Rs.10,000/- to Social Health and Medicine (SOHAM) Trust, Bank Name : Syndicate Bank, Aundh, Pune, Account No.5342 201 00 15352, IFSC Code : SYNB0005342, Bank Pin Code :411 008, and this amount shall be paid within one month and proof of payment will be submitted to Sahakar Nagar Police Station, Pune in S.C No.659 of 2005 C.R No.302 of 2005.

14. Appeal accordingly stands disposed.

(K.R.SHRIRAM,J)