

Anand

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

**CRIMINAL APPEAL NO. 789 OF 2014
WITH
CRIMINAL APPLICATION NO. 1034 OF 2018
IN
CRIMINAL APPEAL NO. 789 OF 2014**

Chandrakant Moreshwar Vaidya .Appellant/
Age : 40 yrs, Indian Inhabitant Applicant
R/o. Shivshastri Nagar Zopadpatti,
R. No. 392, CPRA Garden,
Prakash Pethe Marg, Cuffe Parade,
Mumbai – 400 005.

(Presently in Nasik Central Jail)

Vs.

The State of Maharashtra .Respondent

Mr. Nitesh Nevashe, Appointed Advocate, for the Appellant /
Applicant
Mrs. P. P. Shinde, APP, for the Respondent – State

CORAM : REVATI MOHITE DERE, J.

DATE : 08.04.2019

ORAL JUDGMENT

. By this Appeal, the Appellant has impugned the
Judgment and Order dated 30.06.2014 passed by the learned

Additional Sessions Judge, Greater Bombay in Sessions Case No. 782 of 2013, convicting and sentencing him as under :-

- for the offence punishable under Section 394 of the Indian Penal Code, to suffer R. I. for ten years and to pay fine of Rs. 1,000/-, in default to suffer R. I. for three months.

The Appellant was, however, acquitted of the offence under Section 37 punishable under Section 135 of the Bombay Police Act.

2. According to the prosecution, on 19.04.2013 at about 6.45 p. m., when PW.1 – Swati Karnalkar (Complainant) was travelling in the first class compartment, the Appellant entered the said compartment and attempted to carry away the property i. e. her mobile and cash, and in the process assaulted PW.1 in her stomach with a knife. On hearing shouts and cries of PW.1 – Swati and other passengers who were in the adjoining compartment, when the train came to a halt, the Appellant was apprehended on the platform by PW.2 – Umakant Pise and PW.3 – Pandurang

Walawalkar. The Appellant was found in possession of a knife and a nylon bag. Thereafter, PW.1 – Swati lodged a complaint as against the Appellant alleging an offence punishable under Section 397 of the Indian Penal Code. PW.1 – Swati was sent to the J. J. Hospital, pursuant to which, a Medical Certificate was issued by the J. J. Hospital. After investigation, charge-sheet was filed against the Appellant in the court of the learned J.M.F.C. Since the offence was Sessions triable, the case was committed to the Court of Sessions for trial. The learned Sessions Judge framed charge as against the Appellant, to which the Appellant pleaded not guilty and claimed to be tried.

3. The prosecution in support of its case examined five witnesses; PW.1 – Swati Karnalkar (Complainant & injured); PW.2 – Umakant Pise (Police Naik), who apprehended the Appellant at the Marine Lines Railway Station; PW.3 – Pandurang Walawalkar (ASI), who was on duty on platform No. 1 at Marine Lines Railway Station on 19.04.2013 and who also apprehended the Appellant on the platform; PW.4 – Sanjay Shinde, Senior Police Inspector, the investigating officer, who conducted the

investigation and PW.5 – Giridas Bhagit, PSO, who was attached to the Churchgate Railway Police Station, who recorded the Complaint / FIR of PW.1 - Swati as against the Appellant (also an investigating officer).

4. The defence of the Appellant was that of denial and false implication. Learned counsel for the Appellant submitted that the Appellant has been falsely implicated in the said case. He submitted that the person who was arrested by the police on the platform was one Nitin Atmaram Tandel and not the Appellant. He further submits that the nature of injury sustained by PW.1 – Swati is a simple injury and as such, there was no intent to cause any grievous injury.

5. Learned APP supported the impugned Judgment and Order of conviction and sentence and submitted that no interference is warranted in the same.

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

assistance.

7. At the outset, it is pertinent to note that the Appellant has admitted the Injury Certificate which is at page No. 69 of the paper book and which is marked as Exh.20. The said Certificate (Exh.20) is that of PW.1 – Swati Karnalkar. The nature of injury mentioned is incised wound, 5 x 0.5 cm horizontal on the left side of abdomen with a sharp weapon. The nature of injury is stated to be a simple injury. A perusal of the evidence of PW.1 – Swati Karnalkar shows that on 19.04.2013, she boarded the train at 6.45 p. m. from Andheri Railway Station to go to her house at Charni Road; that she was in the first class compartment; that the said train, being a fast train, did not halt at Charni Road and hence, she went to Churchgate and after alighting from the said compartment, boarded a slow train at 7.45 p. m. from Churchgate station. According to PW.1 - Swati, after the train started, one person (Appellant) boarded the compartment; that the said person, who was holding a knife, went towards her and threatened her that if she did not give him mobile and cash, he would kill her. She has stated that she started shouting and the

passengers who were in the second class compartment also started shouting. According to PW.1, there were steel rods between the first class compartment and the second class compartment. She has further stated that the said person assaulted her with a knife on her stomach, pursuant to which, there was a bleeding injury. She has stated that she was crying and at that time, the train stopped at the Marine Lines station. According to PW.1 - Swati, when the train stopped at the Marine Lines station, the Appellant started running away, however, because of her cries, the police and the people nabbed the Appellant. She has stated that the Appellant disclosed his name as Nitin Atmaram Tandel and from his possession, the police seized a knife. She has stated that she was referred by the police to the J. J. Hospital, where she was treated and thereafter, taken to the police station where she lodged a complaint (Exh. 8). PW.1 – Swati identified the Appellant as, being the same person i. e. Chandrakant Vaidya, who assaulted her and who had disclosed his name to the police as Nitin Atmaram Tandel. The tenor of the cross-examination of PW.1 – Swati is to show that the Appellant was not the assailant and that no such incident took place, as

alleged by the prosecution. PW.1 – Swati in her cross-examination has admitted that on the date of incident, she was the only lady passenger in the first class compartment; and that though her clothes were stained with blood, the police did not seize the same. There is nothing in the cross-examination of PW.1 – Swati to disbelieve or discredit her testimony. The aforesaid evidence of PW.1 – Swati has been corroborated by PW.2 and PW.3, who were present at the spot at the Marine Lines Railway Station at the relevant time and who on hearing the cries of a woman in the first class compartment apprehended the Appellant. Both the witnesses have stated that the Appellant was holding a knife. They have stated that one woman (PW.1) got down from the compartment and disclosed her name and the incident. They have further stated that PW.1 - Swati disclosed to them that the Appellant had threatened to take her life and asked her to give her mobile and cash and when she declined, assaulted her. They have stated that they saw blood was oozing from the said injury i. e. abdomen.

8. PW.1 – Swati Karnalkar lodged the FIR promptly and

there is nothing to show, why she would falsely implicate the Appellant. The Appellant was also apprehended from the spot by PW.2 and PW.3 and from his possession, knife was seized. The police ought to have seized clothes which were worn by PW.1 at the time of the incident, however, the same has not been done. This only reflects the tardiness with which the investigation was done by the police, however, the said fact will not discredit the entire evidence adduced by the prosecution.

9. Considering the aforesaid, there is no infirmity in the Judgment and Order of conviction and sentence of the Appellant for the offence punishable under Section 394 of the Indian Penal Code. However, considering the overall facts of the case including the medical evidence on record and the fact that the Appellant has no antecedents, the sentence of ten years imposed by the trial Court is reduced to seven years. If the Appellant has served his sentence, he be released forthwith, if not required in any other case.

10. The Appeal is, accordingly, partly allowed.

11. In view of disposal of the Appeal, Cri. Appln. No. 1034 of 2018 does not survive and same stands disposed of accordingly.

12. I would like to record a word of appreciation for the able assistance provided and the efforts taken by Mr. Nitesh Nevashe, as an appointed advocate, in conducting the appeal. High Court Legal Services Committee to award fees of the learned Appointed Advocate, as per Rules.

A copy of the Judgment be sent to the Superintendent, Nasik Central Jail in which the Appellant is lodged.

All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)