

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1152 OF 2013

Polash Kartik Mandal.

Aged : 36 years, Occ. Business.

Residing at : Flat No. 702-A,
7th floor, Blue Ocean Building,
Mahavir Nagar, Kandivali(West),
Mumbai-400 067.

..Appellant.

(At present accused is in Thane Central Jail.

V/s.

The State of Maharashtra, through
the Sr. P.I. of Mumbra P. Stn., Dist. Thane,
at the instance of C.R. No. I-6/12.

..Respondent.

Ms. Megha Shashi Bajoria, advocate appointed for appellant.

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

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : APRIL 22, 2019.

JUDGMENT :

1 The appellant herein is convicted for offence punishable under section 326 of the Indian Penal Code and sentenced to suffer R.I. for 4 years and to pay fine of Rs. 3,000/- I.d. to suffer R.I. for 4 months by the Ad hoc Additional Sessions Judge-1, Thane vide Judgment and Order dated 27/8/2013 in Sessions Case No. 522 of 2012. Hence, this appeal.

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2 Before resorting to the facts of the case, it would be necessary to see that the appellant herein was granted bail by this Court vide order dated 30/1/2014. The advocate representing the appellant had filed an application before the Registrar on 3/2/2014 and had asked for the hand-delivery of the order dated 30/1/2014. It is clear from the record that the advocate representing the appellant had not submitted the copy of the Writ before the Sessions Judge at Thane and therefore, a report was called from the Sessions Court, Thane as to whether the appellant had furnished bail. The report of the Assistant Registrar dated 18/3/2019 shows that a reminder was sent to the learned Sessions Judge, Thane, enquiring as to whether bail writ was received by the said Court. The office report shows that upon sending reminders to the District Judge, Thane, it was sent from his report that the District Court at Thane had not received any bail writ till today. In view of this, the appellant continued to remain in custody although he was granted bail vide order dated 30/1/2014.

3 Hence this Court requested Ms. Megha Shashi Bajoria to espouse the cause of the appellant. She has graciously accepted the request made by this Court.

4 Such of the facts necessary for the decision of this appeal are

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as follows :

(i) It is the case of the prosecution that informant Mohd. Javed Isak Shaikh is dealing with the business of hiring utensils. On 4/1/2012 at about 10.30 a.m. the informant alongwith his friend namely Javed Abdul Wahid Shaikh had visited to Mumbra in search of shop to be taken on rental basis for crockery business.

(ii) That Mohd. Javed Isak Shaikh was eye witness to a incident wherein the appellant had assaulted Javed Abdul Wahid Shaikh. The accused/appellant had objection to Mohd. Javed Isak Shaikh being a witness and had questioned the same. He was apprehensive that he would be punished on the basis of the evidence of Mohd. Javed Isak Shaikh and therefore, had mounted assault upon him alongwith one of his friend namely Dhananjay and an unknown person.

(iii) It is the case of prosecution that when informant Mohd. Javed Isak Shaikh reached Mumbra, he was assaulted and the appellant had instigated Dhananjay to assault the injured witness. He reported the matter to Mumbra Police Station.

(iv) On the basis of the said report, Crime No. 6 of 2012 was registered against the present appellant for offence punishable under

section 324 read with section 34 of the Indian Penal Code. At the trial the prosecution has examined 5 witnesses to bring home the guilt of the accused.

5 The case rests on the evidence of P.W. 2 Mohd. Javed Isak Shaikh. He had deposed before the court in consonance with the first information report which is marked as Exh. 18. He has admitted in the cross-examination that he himself was arrested by Nagpada Police Station in one case. He did not know the details of the present appellant. He has also admitted that nobody knew that he was to visit Mumbra on that day, as he used to visit Dargah in Mumbra once in a while. The appellant was not a resident of Mumbra.

6 The case also rest upon the evidence of P.W. 1 Dr. Raju Murudkar who has proved the injury certificate which is at Exh. 11, wherein the doctor has admitted that P.W.2 had sustained injury on his right arm, back, left arm, contused lacerated wound at the abdomen and contused lacerated wound on right side of the neck, which was a deep injury. There was no dislocation and no fracture. According to him, he has also opined that the injury sustained by P.W. 2 was caused from edge side of weapon. The evidence of injured was recorded on 28/2/2013. On 25/7/2013 P.W. 4 has filed an affidavit stating therein that appellant is not the same person who has assaulted P.W. 4 in C.R. No.

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176 of 2012 i.e. previous case, in which probably injured was a witness.

7 P.W.4 has been declared hostile in the present case as he has deposed before the Court that he had not identified the persons who has assaulted him by knife. In fact, upon considering the affidavit filed on record, this Court had granted bail to the present appellant.

8 In the present case, the defence has also examined 3 witnesses and all of them have said that at the relevant time, the accused was not present at scene of offence. In the present case, accused has examined himself as defence witness and has submitted that he was having goldsmith shop at Laxmibhavan, Mumbai. In the same building he was also having residence. The residential room was standing in the name of the appellant and the shop was standing in the name of his wife on tenancy basis. Thereafter, Altaf Lakdawala became owner of the room in the year 2006. There was a quarrel between Lakdawala and the accused. Lakdawala had allegedly demanded Rs. 3 Lakhs to the accused/appellant and had threatened that he would otherwise lock the shop. It is also the case that the accused himself had lodged a report to L.T. Marg Police Station on the basis of which MECR No. 3 of 2011 was registered and on the basis of the registration of same crime, Lakadawala was arrested on 11/11/2011 and therefore, according to the appellant, he had been falsely implicated.

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9 Be that as it may, after recording of the substantive evidence, the injured had filed an affidavit stating therein that he had not actually identified the appellant during the trial or in the court. This Court had granted bail vide order dated 30/1/2014. However, bail writ was not issued and therefore, the accused/appellant continued to remain in custody. The appeal is of the year 2013 . Upon perusal of the evidence and the affidavit, this Court is of the opinion that the accused deserves to be acquitted of all t he charges levelled against him.

10 Hence, following order is passed :

ORDER

- (i) The appeal is allowed.
- (ii) The conviction imposed upon the appellant vide Judgment and Order dated 27/8/2013 by Ad hoc Additional Sessions Judge-1, Thane in Sessions Case No. 522 of 2012 is hereby quashed and set aside. The appellant is acquitted of all the charges levelled against him. He be released forthwith if not required in any other case.
- (iii) Fine amount, if paid, be refunded.
- (iv) Writ be issued expeditiously.
- (v) Professional fees to be paid the learned advocate appointed

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to espouse the cause of the appellant are quantified as per rule to be paid by the High Court Legal Services Committee within 3 months from today.

11 The appeal is disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]