

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.799 OF 2016

Dablu Arun Vishwas	...	Appellant
Versus		
The State of Maharashtra		
(Through Virar Police Station		
C.R.No.522 of 2014		
Session Case No.125 of 2014		
Sections 394, 397 of the		
Indian Penal Code		
Date of Arrest 10/10/2014)	...	Respondent

Ms.Megha Bajoria, Appointed Advocate for the Appellant.

Mr.Vinod Chate, APP for the Respondent/State.

CORAM : A.M.BADAR J.

DATED : 26th SEPTEMBER 2019.

ORAL JUDGMENT :

1 By this appeal, the appellant/accused is challenging the Judgment and Order dated 05/02/2016 passed by the Additional Sessions Judge, Vasai, District Palghar in Sessions Case No.125 of 2014 thereby convicting him for the offences punishable under Section 394 read with Section 397 and 452 of the Indian Penal Code. For the first count, he is sentenced to suffer rigorous imprisonment for ten years apart from a direction to pay fine of

Rs.5,000/- and in default to further undergo rigorous imprisonment for six months. On second occasion, he is sentenced to suffer rigorous imprisonment for five years apart from a direction to pay fine of Rs.2500/- and in default to suffer rigorous imprisonment for three months. The learned trial Court has directed that the substantive sentences shall run concurrently.

2 Facts leading to the prosecution and resultant sentence of the appellant/accused can be summarized thus :

- (a) P.W.No.1 Lata Jadhav along with her husband Narayan Jadhav were having Tea Stall at Virar. The appellant/accused was working on the Chinese Food Stall of Hemant Patil and, as such, they were knowing the appellant/accused.
- (b) The incident in question took place in the night hours of 10/10/2014. Initially, the appellant/accused had been to the house of P.W.No.1 Lata Jadhav and Narayan Jadhav along with their daughter P.W.No.3 Sujata Dhotare. He insisted her to show the house of her parents in order to enable him to place order for food with him. Though, P.W.No.3 Sujata Dhotare was initially reluctant to oblige, she took the appellant/accused to the house of her parents and the appellant/accused then talked with her parents for ordering food. Then, the appellant/accused left the house of P.W.No.1

Lata Jadhav along with P.W.No.3 Sujata Dhotare. In the half way, the appellant/accused left the company of P.W.No.3 Sujata Dhotare.

- (c) According to the prosecution case, the appellant/accused then again returned to the house of P.W.No.1 Lata Jadhav. He knocked the door. Narayan Jadhav opened the door. The appellant/accused demanded water. When Narayan Jadhav was bringing water for the appellant/accused, he pushed Narayan Jadhav and attempted to snatch gold chain from his neck. When Narayan Jadhav resisted, the appellant/accused slit the throat by a knife. P.W.No.1 Lata Jadhav then intervened in order to save her husband Narayan. The appellant/accused then attempted to snatch her gold *mangalsutra*. He gave a blow of knife on her throat. Thereafter, by snatching gold chain from Narayan Jadhav, the appellant/accused fled from the spot.
- (d) Injured Narayan Jadhav and his wife P.W.No.1 Lata Jadhav were then taken to the Sanjivini Hospital, Virar. P.W.No.4 Dr.Dipanjali Deshpande examined them and performed surgical operation on both of them. Injured Narayan Jadhav lodged report (Exhibit 33) against the appellant/accused which has resulted in registration of Crime No.522 of 2014 against the appellant/accused.

- (e) The appellant/accused came to be arrested. His blood stained clothes as well as gold chain of injured Narayan Jadhav came to be recovered by him in presence of panch witness P.W.No.2 Subhash Sawant. Spot came to be inspected. Sample of blood lying on the spot of the incident came to be seized. On the basis of voluntarily disclosure statement of the appellant/accused, a knife came to be seized. On completion of investigation, the appellant/accused came to be charge-sheeted.
- (f) The learned trial Court framed the charge for the offences punishable under Section 394 read with Section 397 and Section 452 of the Indian Penal Code against the appellant/accused. He pleaded not guilty and claimed trial.
- (g) In order to bring home the guilt to the appellant/accused, the prosecution has examined in all nine witnesses.
- (h) The defence of the appellant/accused was that of total denial. However, he did not enter in the defence.
- (i) After hearing the parties, by the impugned Judgment and Order, the learned trial Court was pleased to convict the appellant/accused and sentenced him as indicated in the opening paragraph of this Judgment.

3 I heard Ms.Bajoria, the learned appointed Advocate at

sufficient length of time. She had taken me through the entire evidence adduced by the prosecution and argued that non-examination of injured Narayan Jadhav makes the prosecution case doubtful. She further argued that though P.W.No.3 Sujata Dhotare has deposed about taking the appellant/accused at the house of her parents Narayan Jadhav and P.W.No.1 Lata Jadhav, this fact is not deposed by P.W.No.1 Lata Jadhav. The learned Advocate further argued that recovery of knife at the instance of the appellant/accused is not proved by the prosecution as panch witness P.W.No.2 Subhash Sawant has turned hostile to the prosecution. There is no evidence to show that the recovered knife was the same knife which was used in commission of the crime in question. Therefore, the appellant/accused is entitled for acquittal.

4 The learned Additional Public Prosecutor supported the impugned Judgment and Order of conviction and resultant sentence.

5 I have carefully considered the submissions so advanced and also perused the Record and Proceedings including the oral as well as documentary evidence.

6 In the case in hand, in order to prove the charge levelled against the appellant/accused, the prosecution is heavily relying on evidence of injured P.W.No.1 Lata Jadhav. According to

the prosecution case, the appellant/accused committed robbery by trespassing her house in the night hours of 10/10/2014 and in the course of commission of that robbery, he slit her neck as well as neck of her husband Narayan by means of knife. Ultimately, he flee from the spot by taking gold chain of Narayan. In ***Shivalingappa Kallayanappa v. State of Karnataka***¹, the Honourable Supreme Court has held that deposition of injured witness should be relied upon unless there is strong ground for rejection of his evidence on the basis of major contradictions and discrepancies. This is because, presence of such witness on the scene of occurrence stands established, if ultimately it is proved that such witness suffered the injury during the course of incident in question. Similarly, in the ***State of U.P v. Kishan Chand***², similar view is reiterated by the Honourable Supreme Court by observing that the testimony of a stamped witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence lends support to his testimony that he was present during the occurrence. If the injured witness is subjected to lengthy cross-examination and nothing could be elicited to discard his testimony, then testimony of such witness needs to be relied upon (see ***Kishan v. State of Haryana***³). In the light of these observations of the Honourable Supreme Court, let us examine what P.W.No.1 Lata Jadhav has deposed about the incident and its consequences.

1 1994 SCC (Cri.) 1694.

2 2004 SCC (Cri.) 2021.

3 (2007) 2 SCC (Cri.) 214.

7 Her evidence shows that she was knowing the appellant/accused as she along with her husband Narayan were running the Tea Stall at Virar, whereas the appellant/accused was working on the Chinese Food Stall of Hemant Patil. P.W.No.1 Lata Jadhav testified that at about 10.45 p.m. of 10/10/2014, the appellant/accused knocked her door. Her husband opened the door. The appellant/accused then demanded water and when her husband Narayan was giving water, the appellant/accused pushed Narayan and tried to snatch gold chain from his neck. When Narayan resisted, as deposed by P.W.No.1 Lata Jadhav, the appellant/accused took out a knife and gave blow of that knife on throat of Narayan. She stated that then she intervened to save Narayan. The appellant/accused then tried to snatch her gold *mangalsutra* and gave a blow of knife on her throat. Then, the appellant/accused snatched gold chain from her husband Narayan and managed to flee from the spot. P.W.No.1 Lata Jadhav submitted that she and her husband were then admitted to the Sanjivini Hospital at Virar. Now, let us examine whether P.W.No.1 Lata Jadhav and her husband Narayan suffered injuries as claimed by her in the night hours of 10/10/2014 at the hands of the appellant/accused. P.W.No.4 Dr.Dipanjali Deshpande fully corroborated version of injured P.W.No.1 Lata Jadhav by stating that on 10/10/2014, P.W.No.1 Lata Jadhav and her husband Narayan were brought at the Sanjivini Hospital for treatment. She noticed that both of them had sustained deep injuries on their

throats by sharp edged weapon. The blood was oozing from those injuries. P.W.No.4 Dr.Dipanjali Deshpande further stated that she then examined both these patients and immediately operated them. As per her version, P.W.No.1 Lata Jadhav and her husband Narayan had sustained multiple injuries of width of 2 cm and length of about 14 to 15 cm. Those injuries were 5 cm deep and there was severe damage to the internal veins of throats of the patients. This witness further deposed that due to sharp cut injuries to throat of Narayan Jadhav, laryngeal cartilage as well as thyroid gland came to be exposed. Both of them had sustained grievous injuries which were possible due to sharp edged knife. It is brought on record from her cross-examination that history given was assault by unknown person in the midnight.

8 P.W.No.6 Dr.Nitin Kurde, Medical Officer, Sanjivini Hospital had issued Injury Certificates in respect of injuries sustained by P.W.No.1 Lata Jadhav and her husband Narayan Jadhav. He proved those Injury Certificates (Exhibit 31A and 31B). Perusal of Injury Certificate (Exhibit 31A) shows that Narayan Jadhav had suffered the following injuries :

1. Contusion lacerated wound over neck of size 14 x 5 x 3 cm.
2. Contusion lacerated wound over neck of size 15 x 5 x 3 cm.

Laryngeal cartilage is exposed

Thyroid gland is exposed

Injury Certificate of P.W.No.1 Lata Jadhav at Exhibit 31B shows that she suffered the following injuries :

1. Contusion lacerated wound over neck of size 16 x 4 x 3 cm.
2. Contusion lacerated wound over neck of size 14 x 3 x 3 cm.

As deposed by P.W.No.6 Dr.Nitin Kurde, Medical Officer, Sanjivini Hospital as well as P.W.No.4 Dr.Dipanjali Deshpande, injuries on neck of P.W.No.1 Lata Jadhav and her husband Narayan were grievous in nature. P.W.No.5 Dr.Sarika Waghmare, Medical Officer of Sanjivini Hospital has deposed about recording of statements of both the patients by police at Sanjivini Hospital, Virar.

9 It is thus clear that medical evidence adduced by the prosecution goes to show that P.W.No.1 Lata Jadhav and her husband Narayan Jadhav had suffered grievous injuries in the incident of murderous assault on them in the night hours of 10/10/2014. In cross-examination of P.W.No.1 Lata Jadhav, an attempt was made to show that she and her husband were not financially sound to have gold chain and the incident took place in populous area. However, cross-examination of P.W.No.1 Lata Jadhav goes to show that she and her husband were doing business and they were having Tea Stall at Virar. Prior to that, her husband was in service on monthly salary. What was lost in the robbery was only a gold chin. It is a matter of common knowledge that a salaried person, who was also doing business of selling tea can very well have a gold chain as an ornament of daily use. The incident in question took place at about 11.00 p.m. and that to inside the house of P.W.No.1 Lata Jadhav. Spot panchanama

(Exhibit 19) proved by P.W.No.2 Subhash Sawant makes this fact clear. Hence, though the incident has happened at residential area, as it took place inside the house, there cannot be any eye witness to the same, except the injured. Hence, on this ground, version of P.W.No.1 Lata Jadhav cannot be doubted. She categorically denied the suggestion that her husband was assaulted by some unidentified person. The appellant/accused was known to her and there is no reason to doubt identification of the appellant/accused by P.W.No.1 Lata Jadhav. Soon before the incident and at about 10.00 p.m. of 10/10/2014, the appellant/accused, as stated by P.W.No.3 Sujata Dhotare, had taken to the house of injured P.W.No.1 Lata Jadhav and her husband Narayan. P.W.No.3 Sujata Dhotare is their daughter. She stated that on the pretext of placing the order for food, she was taken by the appellant/accused to the house of her parents. Thus, the appellant/accused sought knowledge of the place of residence of the injured from her daughter P.W.No.3 Sujata Dhotare and after getting this knowledge, had committed the crime in question.

10 Evidence of P.W.No.1 Lata Jadhav is gaining corroboration from evidence of P.W.No.2 Subhash Sawant, who happens to be resident of the locality, where she is residing. This witness has seen the injured admitted at the Sanjivini Hospital. He remained with the injured till 2.00 a.m. in that night. P.W.No.2 Subhash Sawant along with police had inspected the spot of the incident and noticed stains of blood in the house of P.W.No.1 Lata

Jadhav. The sample of the blood lying on the spot came to be seized in presence of this witness. Similarly, P.W.No.2 Subhash Sawant has also deposed about arrest of the appellant/accused on 11/10/2014. In presence of this witness, personal search of the appellant/accused came to be conducted and a broken gold chain came to be seized from him. It is seen that, during the course of trial, the same was given in custody of P.W.No.1 Lata Jadhav. During the course of recording of evidence, P.W.No.1 Lata Jadhav has produced that gold chain and identified the same to be belonging to her husband and robbed by the appellant/accused.

11 Evidence of injured P.W.No.1 Lata Jadhav shows that because of murderous assault by the appellant/accused on her husband Narayan, her husband Narayan became ill and he could not attend the Court for adducing evidence. Injury Certificate at Exhibit 31A reflecting injuries suffered by Narayan justified his absence for adducing evidence. Statement of P.W.No.1 Lata Jadhav to that extent is not challenged in the cross-examination.

12 In the result, with this evidence, the prosecution has established the fact that the appellant/accused committed robbery at the house of P.W.No.1 Lata Jadhav in the night intervening 10/10/2014 and 11/10/2014 by trespassing her house. During the course of that robbery, he caused grievous hurt by slitting necks of P.W.No.1 Lata Jadhav and her husband Narayan thereby attempting to cause their death. As such, no case for interference

is made out and the appeal is devoid of merits. Hence, the Order :

ORDER

The appeal is dismissed.

(A.M.BADAR, J.)