

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.926 OF 2017**

Vilas Anil Gaikwad

Age : 35 years, Occu. : Driver

R/at : Near Bhim Sanghatana

Tarun Mandal, Tadiwala Road,

Pune.

(at present Yerawada Jail)

... Appellant

V/s.

The State of Maharashtra

Through Bund Garden Police Station

... Respondent

Mr. Satyavrat Joshi for the Appellant.

Mr. S.R. Agarkar – APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J

DATED : 9TH SEPTEMBER 2019.

ORAL JUDGMENT :

1. The appellant herein is convicted by the Additional Sessions Judge, Pune vide judgment and order dated 9th October 2017 in Sessions Case No.262 of 2010 for the offences punishable under sections 307 and sentenced to suffer R.I. for seven years and to pay fine of Rs.5,000/- in default to suffer S.I. for two months. The appellant is further convicted u/ss. 332 and 353 of the Indian Penal Code and sentenced to suffer R.I. for one year and to pay a fine of

Rs.1000/- I/d he shall further suffer one month S.I. The appellant is further convicted u/s. 427 of IPC and sentenced to suffer R.I. for one year and to pay fine of Rs.1000/- I/d he shall further suffer one month S.I.

2. Such of the facts necessary for the decision of this case is as under :-

The incident is dated 15th November 2009. PW1-complainant - Mr. Suhas Barge was officiating as Police Naik at Tadiwala Lane, Pune. A lady named Lata Gade had approached the Police and had informed, that a man with a beard was holding a sickle in his hand and creating ruckus on the road and that his activities seemed dangerous to law and order in the said area. The complainant along with his colleague Police Naik, Deshmukh had left the Police Station and had gone on patrolling duty. When he went to the spot mentioned by PW2 - Lata Gade, he found a man with sickle in his hand. He was trying to restrain him from moving any further. The said person apprehending arrest mounted assault upon PW1 with the sickle he was holding. He attempted to assault PW1 on his head and back however PW1 could dodge the said assault. The blow of the sickle landed on his thumb thereby mutilating his thumb. He could not arrest

the said person and by then the said unknown person had escaped through a lane.

3. PW1 had then called upon his colleagues. They picked up the mutilated part of his thumb and went in search of the accused persons. They could trace him within a few hours. In the course of investigation, they have recovered the sickle with which he has assaulted. After completion of investigation, charge sheet was filed and the case was committed to the Court of Sessions and registered as Sessions Case No.262 of 2010.

4. The prosecution has examined 10 witnesses to bring home the guilt of the accused. The case rests on the evidence of PW1 - Suhas Barge – the injured complainant. PW5 – Sitaram Deshmukh was working as a Beat Marshal at the relevant time, however he is not eyewitness to the incident. PW7 – Kaustubh Prabhune - Medical Officer who treated the complainant and PW10- Suhas Nadgauda who carried further investigation.

5. PW1 has deposed before the Court in consonance with the FIR which is at Exhibit – 10. According to him, appellant had intended to assault PW1 on his head and back, since he warded off the said

blows, it fell on his left hand. The sickle had mutilated his thumb of left hand. It is pertinent to note that he had not recorded the said incident in the station diary or case diary before leaving the Police Station. He had neither informed the superior police officers about the said incident. Moreover PW2 - Lata Gade has resiled from her earlier statement and is declared hostile by the prosecution.

6. PW2, PW3 and PW4 have not supported the prosecution case.

7. According to PW5, he had heard the cry of PW1 and he had seen some ladies talking with Barge i.e. PW1. Mr. Barge had called upon him soon after the incident. PW5 had taken PW1 to Jahangir Hospital.

8. PW7 – Kaustubh Prabhune has proved the medical certificate which is at Exh.21. He had examined PW1 and found that his thumb was mutilated. There are no other external or internal injuries on the person of PW1. It is pertinent to note that PW7 has not stated in his evidence that the injuries sustained by PW1 would be sufficient in the ordinary course of nature to cause death. All that is stated is that death of the patient could be caused by such weapon.

PW1 was admitted and treated as an indoor patient for 5 days. PW7 has admitted in the cross-examination that in the eventuality, that such a patient approaches the hospital within six to eight hours then the fingers could be replanted. He has admitted that the patient was operated and the thumb was replanted. According to PW7, before the patient was examined by him the dressing was already made by some other Doctor. He had reopened it. He has denied to have seen any injury on his back. The discharge summary would show that the repair and construction of mutilated thumb on 16th January 2009 was done by Dr. Prabhune under Axillary block. There was no fracture of the mutilated thumb seen and therefore, the said finger could be replanted. PW10 - Suhas Nadgauda was attached to Bundgarden Police Station. He has received papers in Crime No.457 of 2009 for investigation. He had received telephonic information from Shri Deshmukh about the said incident.

9. PW1 had not sustained any other injury except mutilation of the thumb. The learned counsel for the appellant submits that the incident has been blown out of proportion by PW1 in order to book the accused under section 307 of IPC. It is also urged before the Court that the identity of the accused has not been established in accordance with

law and therefore, the accused deserves to be acquitted of all the charges levelled against him. The learned counsel has further submitted that PW2 - Lata Gade was not called for Test Identification Parade. The arrest of the accused is caused within few hours of the incident and that he was not armed with the sickle at the time of arrest and the recovery of the said sickle has been foisted upon the appellant.

10. As against this, the learned APP has submitted that there is no reason for false implication. It is the specific case of the prosecution that the accused had prohibited arrest at the hands of the Police and therefore, he had mounted assault. There is no question of identification by Lata Gade as the complainant himself is the eye witness. He has caused arrest of the accused who had mounted assault on him and therefore, there is no question of Test Identification Parade.

11. Taking into consideration the nature of the injury sustained by PW1, it can be stated that the appellant would be liable to be convicted for the offence punishable under section 326 of the IPC which reads as follows :-

“326. Voluntarily causing grievous hurt by dangerous weapons or means -

Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt by means of any instrument

for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

12. The prosecution has established the identity of the accused and the act committed by the accused. However, in view of the facts mentioned hereinabove, it cannot be said that the appellant could be held liable for an offence punishable under section 307 of IPC and he deserves to be convicted under section 326 IPC. Hence, the following order:-

ORDER

- (i) The Appeal is partly allowed;
- (ii) The conviction and sentence imposed upon the appellant vide judgment and order dated 9th October 2017 by the Additional Sessions Judge, Pune for the offences punishable under sections 307, 332, 353 and 427 of Indian Penal Code is hereby quashed and set aside;
- (iii) The conviction of the appellant for the offence punishable under section 326 of the IPC is confirmed and sentenced to

suffer R.I. for three years and fine of Rs.5,000/-, in default
suffer S.I. for three months;

(iv) The appellant has undergone the sentence under sections
353, 332 and 427 of the IPC. The conviction for the same
is maintained;

(v) The appellant is entitled to set off as he has been in
custody since 9th October 2017;

(vi) Writ be issued expeditiously.

13 The appeal is disposed of accordingly.

(SMT. SADHANA S. JADHAV, J)