

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

CRIMINAL APPEAL NO. 863 OF 2017

Pradeep Murari Keer	Appellant
V/s.	
The State of Maharashtra	Respondent

Mr. Prashant Sawardekar for appellant.

Mrs.P.P. Shinde, APP for State

**CORAM : SMT. SADHANA S. JADHAV &
N.J. JAMADAR, JJ.**

Reserved for Judgment on : 15th September 2020.

Judgment Pronounced on : 22nd September 2020.

JUDGMENT (Per N.J. Jamadar, J.) :

1. The challenge in this appeal is to the judgment and order dated 21st August 2017 in Session Case No. 398/2015, whereby the learned Additional Sessions Judge, Thane convicted the appellant for the offences punishable under sections 307 and 324 of the Indian Penal Code, 1860 ('The Penal Code') and sentenced him to suffer imprisonment for life and pay fine of Rs.50,000/-, on the first count, and rigorous imprisonment for one year and fine of Rs.10,000/-, on the second count, with default stipulation.

2. The gravamen of indictment against the appellant-accused runs as under :-

(a) Pooja Keer (hereinafter referred to as ‘the injured’) is the wife of the accused. Their marriage was solemnized on 7th March 1999. They were blessed with a son Master Bhaumik on 4th September 2006. The marital life of the accused and the injured has been besetted with discord. The injured left the matrimonial home in January 2013. A petition for divorce was filed in the Family Court at Bandra on 27th February 2014. The accused made unreasonable demands to give consent to dissolve the marriage by a decree of divorce.

(b) In the meanwhile, the injured started to work as an Accountant with Mr. Manjitsingh Triloksingh Anand (‘first informant’), who deals in the business of supply of construction material and equipments under the name and style of Victor Infra. The injured also formed a partnership firm with the first informant and her sister Smt. Shweta Patil under the name and style of MSP Associates.

(c) On 25th May 2015, the first informant and his staff members, including the injured were on their way to Mira Road

from Majiwada in the car of the first informant bearing No.MH48-A4348. When they reached near the ATM Centre of Vijaya Bank situated besides Tatvadnyan Vidyapeeth, on being asked by the first informant, the injured alighted from the car and proceeded to the ATM centre to withdraw an amount of Rs.20,000/-. The first informant and his staff members were waiting in the car. The first informant noticed the accused entering into the ATM centre armed with a knife. The first informant rushed towards the ATM. He found the accused inflicting blows by means of knife on the injured. The latter was raising alarm. When the first informant attempted to rescue the injured, the accused inflicted blows by means of knife on the chest and stomach of the first informant. The other occupants of the car and persons in the vicinity rushed to their rescue. A Police Officer also came thereat. The said Police Officer apprehended the accused. Since the injured had sustained multiple bleeding injuries, the injured and the first informant were initially shifted to Metro Hospital, Manpada and, after primary treatment thereat, they were taken to the Jupiter Hospital for further treatment. The report of the first informant came to be recorded at Jupiter Hospital.

3. Crime was registered at C.R.No.244/2015 at Kapurbawadi Police Station, Thane. Investigation commenced thereon. During the course of investigation, the investigating officer visited the scene of occurrence and drew panchnama. The accused came to be arrested from the scene of occurrence. The weapon of offence i.e. knife was seized. The injury certificate of the injured and the first informant were obtained. After finding the complicity of the accused, the investigating officer lodged report under section 173 of the Code of Criminal Procedure, 1973 ('The Code') in the Court of jurisdictional Magistrate.

4. On committal, the learned Additional Sessions Judge, Thane framed charge against the accused for the offences punishable under section 307 and 324 of the Penal Code. The accused abjured his guilt and claimed for trial.

5. At the trial, to substantiate the indictment against the accused, the prosecution examined in all 10 witnesses, including Pooja Keer, the injured, Manjitsingh (P.W.No.1)-the first informant, and Shivaji Maruti Patil (P.W.No.4), the Assistant Sub-Inspector who had apprehended the accused at the scene of occurrence, as the eye witness to the occurrence, and Dr. Prakash Kotak (P.W.No.5) and Dr. Shriprakash Donga (P.W.No.7), who had examined and treated the

injured at Jupiter Hospital and Metro Hospital, respectively. After the closure of the prosecution evidence, the statement of the accused under section 313 of the Code was recorded. The defence of the accused was of denial and false implication as the first informant was desirous of marrying the injured. The alleged liaison between the first informant and the injured forced the accused into depression, which was sought to be established by examining Dr. Sunil Nanaware (D.W.No.1), the Consulting Psychiatrist.

6. After appraisal of the evidence and material on record, the learned Sessions Judge was persuaded to hold that the prosecution succeeded in establishing the murderous assault perpetrated by the accused on the injured and the hurt caused to the first informant by means of dangerous weapon when the first informant attempted to rescue the injured. The learned Sessions Judge found that the ocular account of the injured witnesses was amply corroborated by the testimony of Mr. Shivaji Maruti Patil (P.W.No.4) and the circumstantial evidence.

7. In the backdrop of the number of grievous injuries caused to the injured and the attendant circumstances, the learned Sessions Judge was of the view that the accused deserved to be punished with the

maximum sentence prescribed under section 307 of the Penal Code. Accordingly, the accused came to be sentenced and punished as indicated above.

8. Being aggrieved by and dissatisfied with the impugned judgment and order of conviction and sentence, the accused has preferred this appeal.

9. We have heard Mr.Prashant Sawardekar, the learned counsel for the appellant and Mrs. P.P. Shinde, the learned Additional Public Prosecutor at some length. With the assistance of the learned counsels, we have carefully perused the evidence and material on record.

10. Mr. Prashant Sawardekar, the learned counsel for the appellant made a strenuous effort to demonstrate that there are glaring lacunae in the prosecution case. The testimony of Pooja Keer (P.W.No.2) the injured and Manjitsingh (P.W.No.1), the first informant, blisters with omissions and improvements. Both the witnesses have made a conscious effort to deny the relationship between them which, according to the learned counsel for the appellant, could not have been denied and, in fact, was the cause of marital discord between the appellant and the injured. On close scrutiny, according to Mr.

Sawardekar, the evidence of Pooja Keer (P.W.No.2), the injured and Manjitsingh (P.W.No.1), the first informant, does not inspire confidence. It was further urged that the claim of Mr.Shivaji Patil (P.W.No.4) of having witnessed the assault upon Manjitsingh (P.W.No.1) and apprehended the accused along with the weapon of offence, on proper evaluation of evidence, does not appear worthy of credence. Lastly, the medical evidence in the form of testimony of two doctors, Dr. Prakash Kotak (P.W.No.5) and Dr. Shriprakash Donga (P.W.No.7) and the discharge cards (Exh.33 and 34) tendered for the perusal of the Court, and the circumstantial evidence, especially the photographs of the CCTV footage, also suffer from significant infirmities. In the circumstances, the accused deserves to be acquitted, submitted Mr.Sawardekar.

11. In opposition to this, Mrs. P.P. Shinde, the learned APP stoutly submitted that the accused was apprehended at the very moment of perpetration of murderous assault upon the injured. The presence of injured, the first informant and the accused at the scene of occurrence is established beyond the shadow of doubt. The testimony of the injured witness is amply corroborated by Manjitsingh (P.W.No.1), the first informant, and Mr.Shivaji Maruti Patil (P.W.No.4). The

circumstantial evidence nails the accused unequivocally. Thus, the appeal is devoid of substance, urged Mrs.P.P. Shinde.

12. A brief resume of the evidence especially of Mrs.Pooja Keer (P.W.No.2), the injured, Manjitsingh, (P.W.No.1), the first informant and Shivaji Patil (P.W.No.4) would assist us in appreciating the aforesaid submissions in proper perspective.

13. Mrs.Pooja Keer, (P.W.No.2), after apprising the Court about the marital discord leading to institution of the proceedings for a decree of divorce, testified to the fact that on 25th May 2015 she was on her way to Mira Road along with her employer Manjitsingh (P.W.No.1) and his other employees in Endeavor Car. At about 1:00 P.M., on the directions of Manjitsingh (P.W.No.1), she alighted from the car to withdraw an amount of Rs.20,000/- from the ATM Centre of Vijaya Bank situated at Thane near Tatvadhyan Vidyapeeth. While she was withdrawing the amount from the ATM, the accused entered into the ATM booth and stabbed her on various parts of her body by means of knife. She raised alarm. Thereupon the accused gave a blow by means of knife below her tongue. The first informant Manjitsingh (P.W.No.1) rushed into the ATM booth and tried to rescue her. The accused

inflicted blows by means of knife on Manjitsingh (P.W.No.1) as well. Mrs.Pooja Keer (P.W.No.2) claimed to have sustained multiple stab injuries and lost consciousness. When she regained consciousness, she found herself at Jupiter Hospital, Thane.

14. On the core of the occurrence, Manjitsingh (P.W.No.1), the first informant, lends unflinching support to the testimony of Mrs.Pooja Keer (P.W.No.2). Manjitsingh (P.W.No.1) wants the Court to believe that when he noticed the accused entering into the ATM booth, armed with a knife, he rushed to the ATM booth. He had seen the accused inflicting multiple blows by means of knife on Mrs. Pooja. When he tried to rescue Mrs.Pooja, the accused inflicted blows by means of knife on his chest and stomach. His other employees and nearby persons gathered. A Traffic Police came thereat and the accused came to be apprehended. According to Manjitsingh (P.W.No.1), they were initially taken to Metro Hospital and, after primary treatment, they were shifted to Jupiter Hospital where his first information report (Exh.23) came to be recorded.

15. The claim of Mrs.Pooja Keer (P.W.No.2) and Mr.Manjitsingh (P.W.No.1) of having sustained stab injuries finds requisite support in

the evidence of Dr. Saiprasad Donga (P.W.No.7) and Dr. Prakash Kotak (P.W.No.5). Dr. Saiprasad Donga (P.W.No.7) then a visiting consultant at Metro Hospital informed the Court that on the day of occurrence, Mrs.Pooja Keer (P.W.No.2) was brought thereat by Manjitsing (P.W.No.1). Dr. Saiprasad Donga claimed that he found multiple stab injuries over neck, chest, abdomen, back, hand and forearm of the injured. She was in a critical condition. Thus, he gave primary treatment and stapled the bleeding stab wounds and referred her to Jupiter Hospital, Thane.

16. Dr.Prakash Kotak (P.W.No.5), General Surgeon of Jupiter Hospital informed the Court that he had found eighteen stapled wounds on injured's chest, abdomen, neck, breast, hand, face etc. In view of the critical condition, Pooja Keer was operated upon immediately and during the course of surgery Dr. Prakash Kotak (P.W.No.5) claimed to have found the following injuries :-

“(i) Two perforations over anterior wall of stomach were found incised wound over left lobe of liver 5 cm.

(ii) two incised wounds over diaphragm 5 cm. And 8 cm. in length,

- (iii) left external jugular cut was ligated (neck vein),*
- (iv) right breast wound was going deep into the chest with bubbling and air link with each.”*

17. Dr. Prakash Kotak (P.W.No.5) claimed to have examined Manjitsingh (P.W.No.1) as well and found the following injuries :-

- “(i) Stapled wound over umbilical region having 5 cm length.*
- (ii) Stapled wound over right side of chest above the right nipple 7 cm in length.”*

18. The ocular account of the injured and first informant about having sustained the stab injuries stands fully substantiated by the injuries found on their person by the Medical Officers within hours of the occurrence. It is pertinent to note that during the course of cross examination of the injured Mrs. Pooja Keer (P.W.No.2) and Manjitsingh (P.W.No.1), a faint attempt was made to attribute a cause other than the assault for the said injuries. It was suggested to Pooja Keer (P.W.No.2) that stones were pelted on the ATM booth and she suffered injuries due to the glass shards. Whereas it was suggested to Manjitsingh (P.W.No.1) that while the accused was going out of the ATM booth, he had a scuffle with the accused and, in the said scuffle, Manjitsingh (P.W.No.1) sustained the injuries. This stand of the accused does more harm than good to the defence of the accused.

On the one hand, the factum of the injured and the first informant having sustained injuries cannot be said to be put in contest. On the other hand, the presence of the accused at the scene of occurrence can hardly be denied.

19. The material on record thus establishes beyond the pale of controversy that Mrs.Pooja Keer (P.W.No.2), the injured had sustained critical stab wounds, which were sufficient in the ordinary course of nature to cause death, and the first informant had also sustained hurt. On the aspect of the authorship of the murderous assault upon the injured and hurt to the first informant, as indicated above, the injured and the first informant have given a vivid account of the manner in which the accused entered into the ATM booth and belaboured the injured by inflicting blows by means of knife. The injured and the first informant have deposed to the fact that when the first informant tried to rescue the injured, the accused assaulted the first informant as well. The evidence of Shivaji Patil (P.W.No.4) renders further support.

20. Shivaji Patil (P.W.No.4) claimed to have rushed to the ATM centre, after being apprised of the fact that a scuffle was on at the ATM booth. Shivaji Patil (P.W.No.4) claimed to have noticed the

accused assaulting the first informant by means of knife and apprehended the accused with the help of members of the public. He rushed into the ATM booth and found the injured lying thereat. The injured was bleeding profusely. Shivaji Patil (P.W.No.4) claimed to have handed over the accused along with the weapon of offence i.e. knife to ASI Kale, who reached the spot.

21. Mr.Sawardekar, the learned counsel for the appellant would urge that Mr.Shivaji Patil (P.W.No.4) cannot be said to be an eye witness. Attention of the Court was invited to an admission that before he reached the spot, 100 to 200 people had already gathered thereat. Since Mr. Shivaji Patil (P.W.No.4) was on traffic control duty near Tatvadnyan Vidyapeeth, he could not have immediately rushed to the spot to witness the occurrence, urged Mr. Sawardekar. We find it rather difficult to accede to the submission of Mr.Sawardekar. Mr.Shivaji Patil (P.W.No.4) did not claim that he witnessed the assault upon the injured. He claimed to have apprehended the accused whilst the latter was trying to assault the first informant by means of a knife. At any rate, the testimony of Mr. Shivaji Patil (P.W.No.4) is of assistance to the prosecution in establishing the fact that the accused was apprehended at the scene of occurrence. Nothing could be elicited

in the cross-examination of Mr. Shivaji Patil (P.W.No.4) to impeach his claim of having apprehended the accused at the spot along with the weapon of offence, i.e., knife. On the contrary, it was suggested to Shivaji Patil (P.W.No.4) that when he tried to apprehend the accused, the latter resisted the attempts at apprehending him.

22. The aforesaid ocular account, if considered in conjunction with the rather indisputable factum of the presence and nabbing of the accused on the scene of occurrence along with the weapon of assault, clearly establishes the authorship of the assault upon the injured and the first informant.

23. The effort on the part of the accused to demonstrate that the relationship between the injured Mrs.Pooja Keer (P.W.No.2) and the first informant Manjitsingh (P.W.No.1) was not simply that of an employee and employer and there was an extra-marital affair between them is of no assistance to the accused. In the facts of the case, as rightly inferred by the learned Sessions Judge, the marital discord between the accused and the injured furnished a cause and motive for the occurrence.

24. In addition, there is strong circumstantial evidence which lends unwavering corroboration to the ocular account of the injured and the first informant. The scene of occurrence panchanama (Exh.29), proved in the evidence of Arvindsingh Anand (D.W.No.3), records that blood had spilled over the floor of the ATM centre. A mobile phone handset of Sony make, a debit card of Axis Bank, with the name of Manjitsingh, the first informant as the account holder, a debit slip evidencing the withdrawal, currency notes of Rs.500/- and Rs.100/- denomination (aggregating to Rs.10,000/-) and a pair of ladies sandal were found lying at the scene of occurrence and the same were seized under the said panchnama. The aforesaid situation at the spot depicted in the scene of occurrence panchanama fully substantiates the claim of the injured. Moreover, the clothes of the injured, the first informant and the accused were seized. The CA report (Exh.19) reveals that clothes of the injured, i.e., kurta and jeans pant were stained with blood of group 'A', which is the blood group of injured. The shirt and trouser of the accused were also stained with blood of 'A' group. The knife also had blood stains on blade and handle of human origin.

25. Mr.Sawardekar urged with tenacity that the recovery of knife is

shrouded in mystery. Shivaji Patil (P.W.No.4) claimed that he had made the accused to collect and keep the knife at the place of occurrence till the arrival of police. In contrast, Mukesh Goud (P.W.No.6), the public witness to the arrest of the accused, seizure of the clothes and the weapon of offence deposed that the knife was found in the pocket of the trouser of the accused. Furthermore, the public witness Mukesh Goud (P.W.No.6) appeared to be amenable to the influence of police. These factors, in the light of the overwhelming evidence, do not detract materially from the prosecution. The conduct of Shivaji Patil (P.W.No.4) in pinning down the accused and making him to hold the weapon of offence till he was handed over to the police cannot be said to be unnatural. The identity of the weapon of offence, i.e., knife by the injured and the first informant could not be impeached during the course of their cross-examination.

26. Moreover, the contemporaneous evidence in the nature of the images captured by the CCTV camera, installed in the ATM booth, establishes it beyond the pale of controversy that the accused was armed with a knife and brutally assaulted the injured and the first informant. A compact disc (CD) containing the relevant images and

photographs came to be tendered for the perusal of the Court through the testimony of Rameshwar Sharma (P.W.No.8) who claimed to have copied the data from the hard disk to the CD and developed the photographs (Exh.50(1) to Exh.50(17)). The photographs (Exh.50(1) to Exh.50(17)) depict the manner in which the accused assaulted the injured and the first informant. They reveal that the accused was armed with a knife and unleashed blows on the injured and the first informant. The date and time of occurrence are also freezed.

27. Mr. Sawardekar, the learned counsel for the appellant took pains to demonstrate that the electronic evidence was legally inadmissible. Mr.Rameshwar Sharma (P.W.No.8) cannot be said to be the person who has the technical know how to transfer the data from the hard disc to the CD and issue the certificate envisaged by section 65B of the Evidence Act, urged Mr. Sawardekar. It is true that Mr. Rameshwar Sharma (P.W.No.8) did not fare satisfactorily in the cross examination inasmuch as Mr.Rameshwar Sharma (P.W.No.8) expressed inability to state as to what the qualification ISC which he claims to possess implies. It was further brought out that the signatures on the certificates (Exhs.47 and 49) which he claimed to have issued, appeared to be different.

28. These infirmities, in our view, are not sufficient to jettison away the testimony of Mr.Rameshwar Sharma (P.W.No.8) and the electronic evidence in the form of images captured in the CCTV camera. It is a common knowledge that to ensure safety, CCTV cameras are installed in the ATM booths. The substance of the claim of Mr.Rameshwar Sharma (P.W.No.8) that he had copied the data from the hard disc to CD, which came to be placed on record, could not be impeached during course of cross examination. The photographs (Exh.50(1) to Exh.50(17)) establish the presence of the accused, injured and the first informant in and near the ATM booth. The camera has snapped the accused in the very act of unleashing the blows by means of knife on the injured and the first informant.

29. The conspectus of the aforesaid consideration is that there is overwhelming evidence to establish that the accused had perpetrated the murderous assault on the injured and caused hurt to the first informant by means of a dangerous weapon. No other view is possible. The learned Sessions Judge was thus justified in returning the finding of guilt against the accused for the offences punishable under section 307 and 324 of the Penal Code.

30. On the aspect of punishment, we find that two factors weighed

with the learned Sessions Judge. One, despite the proceedings for divorce having been filed by the injured, the accused continued to torment her and the occurrence had its genesis in the said marital animosity. Two, the accused inflicted as many as eighteen stab wounds on the injured and this brutal attack was indicative of the intent with which the assault was perpetrated. These factors are undoubtedly relevant. However, the fact that marital discord was the root cause of the occurrence cannot be lost sight of.

31. There is some substance in the submission on behalf of the accused that the proximity between the injured and the first informant made the accused insecure and forced him into depression. The evidence of Dr. Sushil Nanaware (D.W.No.1) indicates that the accused had tried to address mental health issues and availed medical treatment. Though the learned Sessions Judge was justified in observing that the claim of mental illness did not justify the brutal attack upon the injured yet the psychological impact of the marital discord cannot be totally discounted especially when the accused perceived the relationship between the injured and the first informant to be extra-marital (may be wrongly) and thus a threat to his marital relationship.

32. In the matter of punishment, the Courts endeavour to adhere to the principle of just desert. Ideally punishment should have an element of proportionality to the gravity of the offence. In the case at hand, having regard to the entire gamut of the circumstances, including the situation in life of the accused and the discord with which the marital life of the accused and the injured had been afflicted, in our view, the sentence of imprisonment for life for the offence punishable under section 307 slightly errs on the side of severity. Instead, a sentence of imprisonment for twelve years would be a condign punishment.

33. Resultantly, the appeal deserves to be partly allowed to the extent of modification of the sentence for the offence punishable under section 307 of the Penal Code.

34. Hence, the following order :-

O R D E R

- (i) The appeal stands partly allowed.
- (ii) The conviction of the appellant-accused for the offences punishable under section 307 and 324 of the Penal Code stands

confirmed.

(iii) The sentence for the offence punishable under section 307 of the Penal Code stands modified as under :-

The accused/appellant Pradeep Murari Keer is sentenced to suffer rigorous imprisonment for twelve years and pay fine of Rs.50,000/-. In default of payment of fine the accused shall suffer further simple imprisonment for six months.

(iv) Rest of the impugned order stands confirmed.

(v) The appellant shall be entitled to set-off under section 428 of the Code of Criminal Procedure, 1973.

Shraddha
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Talekar

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[N.J. JAMADAR, J.]

[SMT. SADHANA S. JADHAV, J.]