

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

CRIMINAL APPEAL NO. 274 OF 2017

Vijay Jaywant Dongare,
Age : 24 years, Occ : Agriculturist,
R/at : Ballalwadi, Tal : Junnar,
Dist : Pune
(At present Yervada Central Prison) ...Appellant

Versus

The State of Maharashtra
(At the instance of
Otur Police Station, Dist : Pune) ...Respondent

Mr. Aashish Satpute a/w Mr. Aniket U. Nikam and Mr. Amit Icham for the
Appellant

Mr. S. V. Gavand, A.P.P for the Respondent–State

CORAM : REVATI MOHITE DERE, J.

THURSDAY, 11th MARCH 2021

ORAL JUDGMENT :

1 By this appeal, the appellant has impugned the judgment and
order dated 28th February 2017, passed by the learned Sessions Judge,
Khed-Rajgurunagar, District Pune, in Sessions Case No.292/2014,
convicting and sentencing him as under:

- for the offence punishable under Section 307 of the Indian Penal Code, to suffer rigorous imprisonment for 10 years and to pay a fine of Rs.1,000/-, in default of payment of fine, to suffer further rigorous imprisonment for 3 months;
- for the offence punishable under Section 452 of the Indian Penal Code, to suffer rigorous imprisonment for 5 years and to pay a fine of Rs.500/-, in default of payment of fine, to suffer further rigorous imprisonment for 1 month.

Both the aforesaid sentences were directed to run concurrently.

2 On 16th October 2013 at about 4:30 p.m, the appellant is alleged to have assaulted Pravin Gawade with a knife on his abdomen, chest, neck and left hand. Initially, Pravin was admitted to the Rural Hospital at Otur and from there, to Dr. Dhande's hospital at Aale Phata. Pursuant to the said incident, Ashok Gawade (PW 1) lodged an FIR/complaint as against the appellant. The appellant was arrested. After investigation, charge-sheet was filed as against the appellant in the Court of the learned Judicial Magistrate, First Class, Junnar. Since the offence was triable by the Sessions Court, the case was committed to the Court of Sessions for trial.

Charge was framed as against the appellant, to which, he pleaded not guilty and claimed to be tried.

The prosecution, in support of its case, examined 7 witnesses i.e. PW 1- Ashok Manohar Gawade (complainant); PW 2-Pravin Vilas Gawade (injured); PW 3- Ramdas Maruti Gawade (eye-witness); PW 4- Balshiram Damodar Dongare (panch to the recovery of knife); PW 5-Dr. Swapnil Maruti Pise (attached to Dr. Dhande Hospital); PW 6-Dr. Shrihari Maruti Sarkote (the Medical Officer at Rural Hospital, Otur); and PW 7- Jitendra Haribhau Kadam (API).

The defence of the appellant was of total denial and false implication.

After hearing the parties, the learned trial Court was pleased to convict and sentence the appellant as stated aforesaid in para 1.

3 Learned counsel for the appellant submits that the appellant has been falsely implicated in the said case. He submits that because of a prior dispute between the injured and the appellant, the appellant was falsely implicated. He submits that the order dated 28th Febraury 2017 be quashed and set-aside and the appellant be acquitted. Alternatively, learned counsel

submits that the appellant's sentence be reduced to the period already undergone i.e. around four years and one month. Learned counsel relied on the judgments in ***Rajendra Harakchand Bhandari & Ors. vs. State of Maharashtra & Anr.***¹; ***Karamjit Singh vs. State (Delhi Admn.)***² and ***Bharat s/o Fakirchand Khillare & Anr. vs. The State of Maharashtra***³ in support of his submission i.e. for reduction of the sentence.

4 Learned A.P.P supports the judgment and order of conviction and sentence. He submits that the evidence on record clearly shows that the appellant was the assailant and that there was no reason to falsely implicate the appellant. He further submits that there is recovery of blood stained knife at the instance of the appellant and that blood stained clothes of the appellant have been seized.

5 Heard the submissions advanced by the learned counsel for the parties and with their assistance, perused the evidence on record.

6 PW 1- Ashok Gawade is the complainant. He has stated that the incident took place on 16th October 2013, when he and his brother Vilas

1 (2011) 13 SCC 311

2 (2001) 9 SCC 161

3 Cri. Appeal No. 58/2002 dated 4/8/2017

had gone to Otur for purchasing cement and other articles. He has stated that Mahananda, his sister-in-law called up Vilas (complainant's brother) at about 4:45 p.m. and disclosed that the appellant had assaulted Pravin Gawade with a knife on his abdomen, chest, neck and left hand. She further disclosed that she was coming to Otur with Pravin in a car. PW 1- Ashok Gawade has further stated that Vilas narrated the aforesaid fact to him, pursuant to which, they proceeded to Pangarimatha, where they met Mahananda and PW 2- Pravin (injured). He has stated that they saw blood stains on Pravin's clothes and they took Pravin to Rural Hospital, Otur. He has further stated that Pravin disclosed to them that when he was sleeping in the bedroom, the appellant came and assaulted him with a knife and that when he raised hue and cry, Sharad Gawade and other villagers came there. He has stated that seeing them, the appellant fled from the said spot. According to PW 1-Ashok Gawade, having regard to the injuries, Pravin was shifted to Dr. Dhande's Hospital at Aale Phata, after which, he went to the Otur Police Station and lodged a report, which is at Exhibit 10. PW 1-Ashok Gawade, on the next day, produced the blood stained shirt of Pravin before the police, which was seized under a panchanama. According to PW 1-Ashok Gawade, a quarrel had taken place between Akash Tamboli and the appellant at Ganapati Phata, in which, Pravin (injured) intervened, resulting in the appellant falling on the ground. He has stated that this was the reason

for the appellant to assault Pravin with a knife. PW 1-Ashok Gawade showed the spot where the incident of assault had taken place, pursuant to which, blood-stained bedsheet and soil from the spot was collected.

A few omissions have come on record in the cross-examination of the said witness, however, the said omissions are not material omissions so as to disbelieve the said witness or discard his testimony.

7 The evidence of PW 1-Ashok Gawade (complainant) is duly corroborated by PW 2-Pravin Gawade (injured witness). PW 2-Pravin Gawade has stated that the incident took place on 16th October 2013. He has stated that at about 1:30 p.m, he had gone to Ganapati Phata and on witnessing a quarrel between the appellant and Akash Tamboli, he intervened, as he knew both, the appellant and Akash Tamboli; that when he intervened in the quarrel, the appellant fell down; that, as both of them did not pay any heed, he went back to his residence; that when he was sleeping in his house, at about 4:30 p.m, somebody gave a blow of knife on his stomach, as a result of which, he woke up and saw the appellant; that the appellant again assaulted him and because of the hue and cry raised by him, his neighbours came, as a result of which, the appellant fled from the spot. He has further stated that he was taken to the Rural Hospital at Otur and

thereafter, he was shifted to Dr. Dhande's Hospital for treatment. He has stated that he met PW 1 -Ashok Gawade (his Uncle) and narrated the incident to him, pursuant to which, PW 1 -Ashok Gawade lodged a report with the Otur Police Station, as against the appellant. PW 2 -Pravin Gawade has identified the knife with which he was assaulted, as well as his clothes and the clothes of the appellant.

In his cross-examination, PW 2-Pravin Gawade has admitted that he, Akash Tamboli, Yogesh Khandagale and the appellant were friends. He has also admitted that in February 2016, after the incident of assault, a meeting of the Dispute Resolution Committee (Tantamukti Kendra) of their village was held and that in the said meeting, the appellant's family members and he and his family members were present. He has stated that in the said meeting, before the Committee, the dispute between him and the appellant was settled.

8 The aforesaid evidence of PW 2 -Pravin Gawade is duly corroborated by both the medical doctors i.e. PW 5-Dr. Swapnil Pise and PW 6-Dr. Shrihari Sarkote. PW 6-Dr. Sarkote was attached to the Primary Health Centre (PHC) at Otur as a Medical Officer at the relevant time. He has stated that on 16th October 2013, Pravin Gawade was brought to PHC,

Otur by his relatives. He has stated that on examination, he found the following injuries on his person :

- “1) *Incised wound over epigastric region measuring 1 cm x 1 cm deep into abdomen.*
- 2) *Wound at lower sternum measuring 4 cm x 1 cm, sternal deep with sternum fracture palpable (incised wound).*
- 3) *Wound 3 cm x 1 cm over left shoulder posteriorly (incised wound).*
- 4) *Wound at the base of left thumb measuring 2 cm (incised wound).*
- 5) *Wound at left side lateral neck measuring 1/2 cm (incised wound).”*

He has stated that as there was severe bleeding, he gave first-aid treatment to the patient and then referred the patient to Sasoon Hospital, Pune as well as YCM Hospital, Pune, for further treatment. He has produced the Medical Certificate of Pravin Gawade, which is at Exhibit 37. Nothing material has been elicited in the cross-examination of this witness, so as to disbelieve him.

9 Infact, the said evidence of PW 6-Dr. Sarkote is also corroborated by another doctor i.e. PW 5- Dr. Pise, who was attached to

Dr. Dhande's Hospital at Aale Phata. PW 5-Dr. Pise has stated that he was working in the said Hospital at the relevant time when the appellant was brought to the hospital. He has stated that on examination, he found the following injuries on his person:

- “1) Incised wound over epigastric region measuring 1 cm x 1 cm deep into abdomen.*
- 2) Wound at lower sternum measuring 4 cm x 1 cm, sternal deep with sternum fracture palpable (incised wound).*
- 3) Wound 3 cm x 1 cm over left shoulder posteriorly (incised wound).*
- 4) Wound at the base of left thumb measuring 2 cm (incised wound).*
- 5) Wound at left side lateral neck measuring 1/2 cm (incised wound).”*

He has stated that the aforesaid injuries were grievous in nature and were possible with the sharp object i.e. Article 3 i.e. knife seized at the instance of the appellant. He has identified the medical certificate which is at Exhibit 35 issued by him.

10 Apart from the aforesaid, the prosecution has also proved recovery of a blood stained knife at the instance of the appellant. The

doctors have stated that the said injuries caused to Pravin Gawade were possible with the said knife. Blood stains were also found on the appellant's clothes, bed sheet and knife. Although, the result of blood group is inconclusive, the fact remains that blood stains were found on the said articles. The appellant has identified the clothes worn by the appellant, on which blood stains were found. The aforesaid material on record clearly shows that the appellant was the author of the injuries. Thus, the conviction recorded by the trial Court under Sections 307 and 452 of the Indian Penal Code, cannot be faulted and as such, no interference is warranted in the same.

11 The only question that now arises for consideration is, whether the sentence as awarded by the trial Court warrants reduction, in the peculiar facts of this case. Learned counsel for the appellant submitted that the appellant is in custody for more than 4 years 1 month; that he was 24 years of age at the relevant time; and that the dispute between the appellant and the injured-Pravin was resolved and settled before the Tantamukti Kendra. He submits that in this light of the matter, leniency be shown and the sentence be reduced to the period of imprisonment, which the appellant has already undergone. He further submits that the appellant has no antecedents and was not involved in any other offence earlier.

12 From the evidence on record i.e. of PW 2-Pravin Gawade, it appears that the dispute between the appellant and the injured -Pravin was settled amicably before the Tantamukti Kendra, in the presence of the family members of both sides. No doubt, Section 307 is not compoundable, however, having regard to the fact that the appellant and the injured were friends; that the incident has taken place in the circumstances as stated aforesaid and thereafter, the matter was amicably settled between the parties; that the appellant was aged 24 years at the time of the incident and has no antecedents, the ends of justice will be met if the substantive sentence awarded to the appellant is reduced from 10 years to 5 years for the offence punishable under Section 307 of the Indian Penal Code. The conviction and sentence awarded for the offence under Section 452 is maintained. The fine amount and the default stipulation remain as it is.

13 The Appeal is partly allowed in the aforesaid terms and is disposed of accordingly.

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

REVATI MOHITE DERE, J.