

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

**CRIMINAL APPEAL NO. 837 OF 2021
WITH
INTERIM APPLICATION NO. 2449 OF 2021**

Mr. Kalpesh Dinesh Brahikar
Age 31 years, Occ: Labour,
R/o. Mochi Corner,
Malegaon Camp,
Malegaon, District Nashik.

..Appellant
(Org. Accused No.1)

v/s.

The State of Maharashtra
Through P. I.
Camp Police Station,
Malegaon, District Nashik

..Respondent

Mr. Mahendra Sandhyanshiv for the Appellant .
Mr. Ajay Patil, APP for the Respondent-State.

**CORAM : ANUJA PRABHUDESSAI, J.
DATED : 14th OCTOBER, 2021.**

JUDGMENT.

1. The Appellant, hereinafter referred to as the Accused, has challenged the judgment and order dated 21.09.2021 passed by the Addl. Sessions Judge, Malegaon in Sessions Case No. 26 of 2013. By the impugned judgment, the learned Judge has held the Accused guilty of offence under Section 307 of Indian Penal Code and sentenced him to suffer rigorous imprisonment for 10

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years and to pay fine of Rs.10000/-, in default to suffer further simple imprisonment for 6 months.

2. The case of the prosecution in brief is that on 12.11.2012 at 2.00 p.m opposite Munna Auto Garage, at Malegaon, the Accused and two other co-accused caused injuries to Avinash Deore, son of the Complainant-Meena Pradeep Deore, by means of a knife and thereby attempted to cause his death. Pursuant to the First Information Report lodged by Meena Deore, Crime No. 49 of 2012 was registered against the Accused and others with Camp Police Station, Malegaon for the offences under Section 307, 323 and 504 r/w. 34 of IPC.

3. The injured Avinash was initially taken to the Civil Hospital, Malegaon, and later shifted to Healthcare Multi Speciality Hospital, a private hospital at Malegaon. The Medical Officer certified that the injuries inflicted on the injured Avinash were dangerous to life.

4. The Investigating Officer, PW-7 Krushna Soni, recorded the statement of the injured and other witnesses. He visited the scene

of crime and conducted the scene of offence panchanama. He arrested the Accused and the co-accused, seized their clothes and recovered the weapon of offence pursuant to the statement made by the Accused while in custody. He submitted the chargesheet after completion of investigation.

5. The case being Sessions Triable was committed to the Court of Sessions. Charge was framed against the Accused and the other accused for committing offences punishable under Section 307, 323, 504 r/w. 34 of Indian Penal Code. The Accused pleaded not guilty to the charge and claimed to be tried.

6. The prosecution, in support of its case examined 7 witnesses. None of the witnesses except the Investigating Officer (PW7) supported the case of the prosecution. By the impugned judgment, the learned Judge acquitted the co-accused and convicted the Accused for the offence under Section 307 of IPC. Being aggrieved by the conviction and sentence, the Accused has preferred this Appeal under Section 374 of Cr.P.C.

7. Heard learned Counsel for the Appellant/ Accused and the

learned APP for the State. I have perused the records and considered the submissions advanced by the learned Counsel for the respective parties.

8. The crime against the Accused was registered pursuant to the FIR (Exhibit 36) lodged by PW1-Meena Deore, the mother of the injured-Avinash. She has deposed that in the year 2013 her son Avinash had sustained injury on his abdomen. She claimed that she was not aware as to who had assaulted her son. She was cross-examined by the prosecution. She has denied that Ranjit Bagul had told her that there was a fight between the Accused and some boys near the market yard. She has admitted that said Ranjit Bagul had told her that Avinash had sustained injuries and was admitted in Civil Hospital. She has also admitted that she and her husband had visited the Civil Hospital where Avinash was being treated. She has stated that he was subsequently shifted to Health Care Hospital. She admitted having lodged the FIR and confirmed the contents of the same, but in the same breath denied that she had lodged the complaint against the Accused and his two associates for assaulting her son.

9. PW.2-Avinash, the injured has deposed that on 12.11.2012 at about 2.00 p.m, he and his friends Ranjit and Sandip were sitting near Munna Garage at Malegaon. He testified that the Accused and his two friends came to the spot and that there was an altercation between them resulting in both groups assaulting each other. He has stated that he had sustained bleeding injury on his stomach and thigh. He has deposed that he does not know the cause of the injuries. He was shifted to Civil Hospital and later to Health Care Hospital, a private hospital at Malegaon. In the cross-examination by the accused, PW2 has admitted the suggestion that he did not know the boys who had come to the spot of the incident.

10. PW3 Mukesh Tilekar is the panch witness. He has denied having served as a panch witness to the recovery panchanama at Exhibit 45. He was cross-examined by the prosecution. He has denied that the weapon of offence was recovered in his presence pursuant to the disclosure statement recorded in his presence under panchanama at Exhibit 45. He has denied the contents of

the panchanama at Exhibit 45.

11. PW4-Ranjit Bagul, PW5-Ravindra Patil and PW6-Santosh Aseri have deposed that they do not know the Complainant, the Accused and the co-accused. They have stated that they do not know anything about the incident. In the cross-examination by the prosecution, they have denied having witnessed the incident of assault and or having seen the Accused stabbing PW2-Avinash with a knife.

12. PW7-Krushna Soni, is the Investigating Officer. He had recorded the FIR at Exhibit 36, conducted the scene of offence panchanama at Exhibit 40, arrested the Accused and the co-accused, and seized their clothes under panchanama at Exhibit 39. He recovered the kitchen knife allegedly used as a weapon of offence under Panchnama at Exhibit 66, as per the disclosure statement of the Accused at Exhibit 65. He recorded the statements of the witnesses and filed the chargesheet.

13. A plain reading of the evidence indicates that none of the

witnesses, including the injured PW2 Avinash has supported the case of the prosecution. Yet, the learned Judge has held the Accused guilty of offence under Section 307 of IPC. The conviction rests on the evidence of the injured PW2 Avinash, scene of offence panchanama at Exhibit 40, and the injury certificates at Exhibit 41 and 42. Referring to the evidence of PW2 learned Judge has held that the evidence of a hostile witness cannot be discarded in toto and that “*the Judicial Officer has to drag truth from it*”, probably meaning that his evidence to the extent to which supports the prosecution version can be relied upon, if that part of the evidence is found to be creditworthy. The learned Judge has observed that the evidence of PW2-Avinash proves that the Accused and his two friends had come near Munna Garage and that there was a fight between them. The learned Judge has held that PW2-Avinash has admitted that he had sustained bleeding injury on the abdomen and thigh, and that he was admitted in the Civil Hospital and later in Health Care Hospital. The learned Judge has held that ‘*this is not a single admission by the witness, but a concrete evidence against the Accused, not denied by the Accused in cross-examination.*’

14. The learned Judge has observed that the '*concrete evidence*' against the Accused has not been denied in cross-examination and that except one single line cross-examination nothing has been asked to the injured. The learned Judge has further recorded that from the suggestion put to the witness it appears that the defence has admitted the incident and has thus concluded that there is concrete evidence against the Accused.

15. The learned Judge held that the spot panchanama (Exhibit 40) proves that the incident had occurred near Munna Garage whereas the medical certificate at Exhibit 41, 42 and 43 prove that PW2-Avinash had sustained injury on abdomen. The learned Judge has observed that the spot panchanama (Exh.40) and the injury certificate at Exhibit 41 and 42, the genuineness of which was not disputed by the Accused, corroborates the evidence of the injured witness (PW2). The learned Judge therefore concluded that the prosecution has proved that the Accused had assaulted PW2-Avinash.

16. It is pertinent to note that PW2-Avinash did not support the case of the prosecution. Yet the prosecution did not treat him as a hostile witness and did not seek permission of the Court under Section 154 of the Indian Evidence Act to cross examine the witness and demonstrate that he was concealing the truth. The evidence of PW2-Avinash, as relied by the prosecution only establishes that on the relevant date while he and his friends were sitting near Munna garage, the Accused and his two friends came to the site, that there was an altercation and quarrel between them and that he had sustained injury on the abdomen. The evidence of this witness does not indicate that the Accused had come armed with a knife or that the injury sustained by him was inflicted by the Accused.

17. It is also to be noted that the main object of cross-examination is to dis-credit the evidence of a witness or to establish the defence on preponderance of probabilities. In the instant case, the evidence of PW2 did not in any manner point towards the guilt of the Accused and this obviated the need for cross examination. It is also pertinent to note that the suggestion

put to PW2-Avinash that he did not know the boys who had come to the place of the incident can by no means be construed as an admission of the incident. Moreover, it is the cardinal principal of criminal jurisprudence that the initial burden is on the prosecution to establish the case against the Accused beyond reasonable doubt by leading cogent evidence. Suggestions put to the witness can be called into aid only to lend assurance to the prosecution case when the other evidence establishes the guilt of the Accused. However, in the absence of such evidence, suggestions cannot per-se determine the guilt of the Accused. This being the case, the finding of guilt recorded by the learned Judge is based on perverse appreciation of evidence.

18. Interestingly, the learned Judge has observed that the evidence of PW2-Avinash does not indicate that he was assaulted by a knife and has held that the prosecution has not proved the nature of the weapon used in the crime. Yet referring to the medical certificate (Exhibit 42), the learned Judge has held that the fact that the Accused has admitted the said certificate shows that the Accused had knowledge that the injury inflicted by him

was dangerous to life. Based on these findings, the learned Judge has held the Accused guilty of offence under Section 307 of IPC.

19. It may be noted that Section 294 of Cr.P.C. dispenses formal proof of the document when the genuineness of the document is not in dispute. When the genuineness of any document is not disputed, in terms of Sub-section 3 of Section 294, such documents can be read in evidence without formal proof of the document. The object of this provision is to obviate long drawn process of proving the documents which are not in dispute. In the instant case, there is no denial of the fact that the Accused had admitted genuineness of the medical certificates at Exhibits 41, 42 and 43 and hence the same could be read in evidence without examining the doctor who had issued the certificates. The medical certificate at Exhibit 42 proves that PW2 had sustained injury on abdomen which was dangerous to life. It is beyond comprehension as to how admission of this certificate at Exhibit 42 can prove that the injuries referred to in the certificate were inflicted by the Accused or that he had knowledge that the injuries were likely to cause death. I have not hesitation in observing that

the finding of the trial Court that '*admitting such document by accused shows that he has a knowledge that the injury caused by him is dangerous to the life, hence he has admitted that medical certificate*'(sic) reflects total lack of understanding of the elementary principle of law and is manifestly perverse.

20. The learned Judge has held the Accused guilty of offence under Section 307 of IPC without there being any semblance of evidence much less '*concrete evidence*' to substantiate the charge. The learned Judge appears to be oblivious of the fundamental principle of criminal jurisprudence that the accused is presumed to be innocent till he is proved to be guilty and that the burden is always on the prosecution to prove its case beyond reasonable doubt by adducing cogent and acceptable evidence. As it has been reiterated by the Apex Court in the case of ***Kailash Gaur vs. State of Assam AIR 2012 SC 786***, suspicion however strong can never take the place of proof. There is indeed a long distance between accused 'may have committed the offence' and 'must have committed the offence' which must be traversed by the prosecution by adducing reliable and cogent evidence. In the

instant case, as noted above, there is absolutely no evidence to link the Accused with the crime. Hence the judgment which is based on surmises and conjectures cannot be sustained.

21. To sum up, the finding of guilt and consequent conviction and sentence is based on absolute and utter perverse appreciation of evidence. The judgment being manifestly perverse on facts and law cannot be sustained. As a result, the Appeal is allowed. The impugned judgment and order is quashed and set aside. The Accused is acquitted of offence under Section 307 of IPC. The Bail bond stand discharged. The Appellant/Accused will fulfill the requirement of Section 437A Cr.P.C. to the satisfaction of the trial Court at the earliest.

. Interim application stands disposed of in view of disposal of the Appeal.

. The Registrar Judicial (I) shall forward a copy of this judgment to the concerned Judge.

(ANUJA PRABHUDESSAI, J.)