

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

**CRIMINAL APPEAL NO. 789 OF 2018
WITH
CRIMINAL APPLICATION NO. 961 OF 2018**

Vinayak Khashaba Tambewagh	..Appellant
Versus	
The State of Maharashtra & Anr.	..Respondents

Mr. Ranjeet Patil for Appellant.
Mr. S. R. Agarkar, APP for State/Respondent No.1.
Mr. Rahul Ramraje Patil for Respondent No.2.

CORAM : SARANG V. KOTWAL, J.
DATE : 17th NOVEMBER 2022

JUDGMENT:

1. The Appellant has challenged the Judgment and order dated 15/05/2018 passed by learned Additional Sessions Judge, Sangli in Sessions Case No.25 of 2015. The Appellant was convicted for commission of offence punishable U/s.307 of I.P.C. and was sentenced to suffer R.I. for 5 years and to pay a fine of Rs.5000/- and in default of payment of fine to suffer R.I. for six months. Out of the fine amount, Rs.3000/- was directed to be paid to the injured Ravindra Tambewagh, who is the Respondent No.2

herein. The Appellant was granted set of U/s.428 of Cr.p.c.

2. Heard Shri. Ranjeet Patil, learned counsel for the Appellant, Shri. Agarkar, learned APP for the State and Shri. Rahul Ramraje Patil, learned counsel for the Respondent No.2.

3. The prosecution case is that, relations between the Appellant and the injured Ravindra were strained. About 15 days prior to the main incident dated 15/09/2014, injured Ravindra Tambewagh had inquired with the daughter of the appellant as to why she was crying. The appellant took objection and picked up a quarrel with Ravindra. On the date of incident when Ravindra was taking bath, the Appellant came there with an axe and gave blows with that axe on the back of Ravindra. When he was about to give third blow, Ravindra prevented him. The Appellant then threw the axe on the spot and ran away. Ravindra was taken to hospital. His wife had seen the incident. She went to Chinchani Wanghi police station and lodged the F.I.R. vide C.R.No.46 of 2014. The investigation was carried out. The Appellant was arrested at about 8.00p.m. on the same day. His clothes were seized. Spot

panchanama was carried out. The axe lying at the spot was recovered and seized. The investigation was conducted and at the conclusion of the investigation the charge-sheet was filed. The case was committed to the Court of Sessions.

4. During trial, the prosecution examined 8 witnesses including the injured Ravindra Tambewagh, his wife Meena, panchas for spot panchanama and seizure of clothes panchanama, two Medical Officers, who had examined Ravindra, and the Investigating officer. The defence of the Appellant was of total denial. After considering the evidence and the statement of the Appellant and after hearing the parties, learned Judge convicted and sentenced the Appellant believing the prosecution case and the evidence produced by the prosecution.

5. The most important evidence in this case is that of injured Ravindra Tambewagh himself who is examined as PW-2. He has deposed that, he was serving as Driver in MSRTC. He was also a farmer. He had taken leave of five months before the incident. His son was handicapped. About 15 days before the

incident he had seen the Appellant's daughter crying and he had asked her why she was crying. At that time the appellant had quarreled with him. The Appellant was also holding grudge as he believed that PW-2 Ravindra was causing trouble between the appellant and his sister's husband and because of that there was dispute between the appellant's sister and her husband. About 15 days prior to the incident the appellant had abused and threatened him.

6. On 15/09/2014, at about 8.00a.m. he was taking bath near a water tank outside his house. His back was towards the door of his house. He felt that somebody had hit him on his back. He turned around. He was hit again. When he was trying to get up the appellant again tried to assault with his axe. At that time, PW-2 held that axe. PW-2 deposed that the person assaulting him was the appellant. PW-2's wife and daughter rushed shouting towards him. The Appellant then threw the axe nearby, abused PW-2 and ran away. The neighbours gathered there. He was taken to hospital. His statement was recorded. He identified the appellant before the Court.

In the cross-examination, he deposed that the distance between the house of the appellant and his house was 25 meters. There was open space between his house and the appellant's house and there was a way in that open space to go to another house. He was cross-examined about the locality. He also deposed that, since past 15 years there was dispute between him and the appellant, but there was no proceeding pending in the Court or in the police station. He explained that since the appellant was quarrelsome and used to give abuses, they were not on talking terms. He was asked about some minor omissions from his statement, but those omissions do not make any difference to the entire evidence. He accepted that, till he was inflicted with two blows, he did not know the assailant. He denied the suggestion that, after the assault he immediately became unconscious. He denied the suggestion that, he was assaulted because of some land dispute with someone else and he had falsely implicated the appellant because of previous enmity. He identified the axe produced in the Court.

7. PW-3 Meena Tambewagh is the wife of PW-2. She has corroborated the evidence of PW-2. She has deposed about the

quarrel between the Appellant and PW-2 which had taken place 15 days prior to the incident. She has described the incident dated 15/09/2014 which had taken place at around 8.15a.m. PW-2 was taking bath. She was sitting in front of the door of her house. Her son and daughter were with her. At that time the Appellant came there with an axe in his hand. The Appellant assaulted PW-2 with axe on his back. She rushed towards her husband. She raised shouts. When the Appellant was about to give the third blow, PW-2 caught him and prevented the third blow. After that the neighbours gathered there and PW-2 was initially taken to Chinchani Wangi Government hospital. The Appellant had thrown the axe near the house. She identified the axe produced in the Court.

In the cross-examination, she deposed that, because of whimsical nature of the appellant, there was quarrel between their families. The Appellant was staying 50ft. to 60 ft. away from their house. She produced the F.I.R. on record at Exhibit 23. It substantially corroborates her evidence.

8. PW-4 Balaso Jagdale was having rationing shop next to

the house of PW-2 and the Appellant. At the time of incident, he heard loud noise of PW-2 and his wife from PW-2's house. This witness ran towards them. He saw the Appellant running away from the side of the house. He saw injuries on the person of PW-2. PW-2 told this witness that the Appellant had assaulted him with axe on his back. After that, PW-4 along with others admitted Ravindra in Gramin Rugnalay, Chinchani. Then he was taken to Krishna Hospital, Karad for further treatment. There was no effective cross-examination of this witness except giving some suggestions which he denied.

9. PW-1 Dipak Gotpagar was a pancha for spot panchanama. The spot panchanama was conducted on the same day i.e. on 15/09/2014 and is produced on record at Exhibit 16. During conducting the spot panchanama, the axe was seized.

10. PW-5 Mahadeo Jagdale was a pancha in whose presence the clothes of the Appellant were seized. The panchanama is produced on record at Exhibit 39. The clothes were produced by the Appellant himself.

11. PW-6 Dr. Pournima Bhingardive and PW-7 Dr. Hemlata Joshi are the important witnesses. PW-6 Dr. Bhingardive was attached to Gramin Rugnalay, Chinchani Wangi. She has stated that, on 15/09/2014 she was on duty. PW-2 Ravindra came there with one relative and his daughter. He spoke about the assault which had taken place at about 8.30a.m. She saw that, his general condition was moderate and he was responding to the questions. He was conscious. She found following two injuries on his person:

i) 25cm x 5cm x 5cm deep incised wound on back, 5cm. Below neck, sharp and clean cut edges, profused bleeding present.

ii) 30cm x 5cm x 12cm deep incised wound, 3cm. away from right shoulder on back, sharp and clean cut edges, profused bleeding present.

The patient was unable to lift his right arm. She referred him to Karad hospital for further treatment. The medical record is produced on record at Exhibit 47. According to her, these injuries were possible by Axe, produced before the Court.

In the cross-examination, she deposed that Ravindra had approached her at 9.02a.m.

12. PW-7 Dr. Joshi was attached to Krishna Hospital, Karad. On that day, at 10.00a.m. Ravindra came to the hospital. Dr. Kulkarni examined and admitted him. This witness produced the medical papers in respect of the treatment given to PW-2 by Dr. Kulkarni. She has deposed that, Dr. Kulkarni had passed away two years before recording of her evidence. According to medical papers there were following two injuries.

- i) Clean incised wound of 18cm x 7cm x 3cm over left scapula, muscle exposed, bleeding present.
- ii) Clean incised wound of 20cm x 10cm x 6cm over right scapula, muscle exposed, bleeding present.

The medical certificate was issued by Dr. Kulkarni. The medical certificate mentions the injuries as referred herein above. She deposed that the nature of injury No.1 was grievous and other injury was simple in nature. Both the injuries were possible by the axe produced before the Court.

13. PW-8 Pandurang Bhopale, P. I. had carried out the investigation. He has deposed that, after taking over the investigation he arrested the Appellant at about 8.00p.m. on 15/09/2014. On the same day the spot panchanama was carried out. The Axe was seized from the spot. On the next day, statement of the injured was recorded at Krishna Hospital, Karad. The muddemal articles were sent for chemical analysis. After completion of the investigation he filed Charge-sheet. He produced the C.A. report on record at Exhibit 66. The C.A. report shows that there was presence of human blood on the Axe, on the T-shirt of the Appellant and in the earth collected from the spot. However, the blood group was not mentioned. Since it is not conclusively established by this C.A. report that the blood found on the articles was that of the injured, this C.A. report is left out of consideration.

14. Learned counsel for the Appellant submitted that the C.A. reports are not incriminating. He submitted that, it was not possible for PW-3 to see the incident as she was inside the house. The incident took place outside the house and, therefore, she could not have seen the assailant. Even for the injured PW-2 it was not

possible to see as to who had assaulted him. Because, according to PW-2 himself the blows were given on his back and he admitted that till the blows were given, he did not know who had assaulted him. He further submitted that the Axe was found on the spot and it cannot be connected to the Appellant. It was not recovered at the instance of the appellant, as such. He further submitted that the Appellant did not have strong enough motive to commit this offence. He is falsely implicated because of previous enmity and grudge which the injured was holding against him.

15. Learned APP, as well as, learned counsel for the Respondent No.2 submitted that the prosecution has sufficiently established its case beyond reasonable doubt. The evidence of PW-2 is sufficient. There is no reason to disbelieve him. He is supported by evidence of his wife-PW-3.

16. I have considered these submissions. Undoubtedly, the evidence of PW-2 decides fate of this case. PW-2 has described the incident. In the background of the incident, there was a quarrel between him and the appellant 15 days prior to the incident. At

that time, the appellant had threatened him. The most important incriminating circumstance in this case is that the injured PW-2 had seen the appellant and had in fact stopped him from giving the third blow. It is not possible to accept the contention of learned counsel for the Appellant that the injured PW-2 could not have seen the assailant because the blows were given on the back. The Appellant then had dropped the Axe near the house of PW-2 and had run away. PW-2's evidence is corroborated by the evidence of PW-3 who was present in the house itself. She was a natural witness and she could have easily seen the incident. She has deposed that, she was sitting at the door and, therefore, she could see what was going on when PW-2 had gone for taking bath. There was hardly any distance between the houses of the appellant and PW-2 and, therefore, the Appellant could come there with an Axe and committed this offence, without any neighbour noticing him.

17. PW-3's F.I.R. which is promptly lodged also corroborates her evidence and there are hardly any contradictions and omissions going to the root of the matter. The evidence of PW-2 and PW-3 is further supported by evidence of PW-4 who had a

rationing shop in the same locality. He had seen the appellant running away from the spot. He had immediately rushed to the spot and PW-2 had told him that the appellant had assaulted him with an Axe on his back. His evidence has remained unchallenged. There was no cross-examination of this witness. He had taken the injured to the hospital with the help of others, therefore, he is also a natural witness and he has supported the prosecution case.

18. Apart from this ocular evidence of eye witnesses and injured witness, the evidence of both medical officers is important. They have described the injuries in detail. The fact that PW-2 had suffered two big injuries on his back is an undisputed fact. Both these doctors have given size of those injuries. The injuries are quite big. Though, PW-7 has stated that second injury was simple injury, however, looking at the size of that injury it is difficult to accept that it was a simple injury. First injury was grievous injury. The evidence of both medical officers corroborates ocular evidence and, therefore, prosecution has sufficiently proved occurrence of the offence and that the appellant was responsible for that assault on PW-2.

19. The next question is whether the act would fall within the meaning of Section 307 of I.P.C. The Appellant had gone to the place where PW-2 was taking bath, with an Axe and had given severe blows on the back of PW-2. He was about to give the third blow when he was stopped by the injured himself and, therefore, the third blow could not be given. The Appellant's intention to give these severe blows is clear from the evidence. It is also important to note that the first injury is below the neck and, therefore, this will definitely amount to attempt to commit murder of injured PW-2. The offence would fall within the meaning of Section 307 of I.P.C. All the ingredients of Section 307 of I.P.C. are made out from this act. This act was done with such intention and knowledge that if by that act he would have caused death, he would be guilty of murder. The act was so dangerous that it would definitely fall within four corners of Section 307 of I.P.C.

20. As far as, sentencing part is concerned, learned trial Judge has already shown leniency and had imposed the sentence of 5 years. There is no scope to reduce that sentence further looking at the nature of injuries suffered by the injured PW-2.

There was no real reason or occasion for the Appellant to have caused this assault on PW-2. Therefore, there is no further scope to reduce the sentence. With the result, I do not find any merit in the Appeal.

21. The Appeal is dismissed.

22. With disposal of this Appeal, nothing survives in the Criminal Application for bail, therefore, the Criminal Application No.961 of 2018 is also disposed of.

(SARANG V. KOTWAL, J.)