

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

CRIMINAL APPEAL NO. 715 OF 2017

Prakash Satyanarayan Sharma

..Appellant

Versus

The State of Maharashtra

..Respondent

Mr. Nikhilesh Pote, Appointed Advocate for Appellant.

Mr. R. M. Pethe, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 19th AUGUST 2022

JUDGMENT :

1. The Appellant has challenged the Judgment and order dated 09/02/2016 passed by learned Additional Sessions Judge, Kalyan in Sessions Case No.281 of 2015. By the impugned Judgment and order the Appellant was convicted for commission of offence punishable U/s.397 r/w. Section 34 of IPC and was sentenced to suffer R.I. for 10 years and to pay a fine of Rs.10000/- and in default of payment of fine to suffer S.I. for one year. The Appellant was granted set off U/s.428 of the Cr.p.c. for the period he spent in jail as an under-trial prisoner since 11/05/2015.

2. Heard Shri. Nikhilesh Pote, learned counsel for the Appellant and Shri. Pethe, learned APP for the State.

3. The prosecution case is that the Appellant was distantly related to the victim Sony Sharma. On 13/08/2014, the Appellant visited her house with a boy. He spoke with her for some time. At around 5.30p.m., he and his companion put a bed-sheet on the head of the victim and assaulted her with a knife on her neck and other parts. The victim became unconscious. The Appellant and his companion took away her *Mangalsutra*, silver coins and cash amount. They then left the place. The victim's neighbour Maya Mange saw her around 6.00p.m. She informed her relatives. The police were informed. The victim was taken to hospital. Her statement was recorded in the hospital and C.R.197 of 2014 was registered at Vishnu Nagar police station U/s.397 r/w. 34 of IPC. The search was taken to arrest the appellant, but he was not found. Ultimately, it was noticed that he was arrested in some other crime in Rajasthan and after transfer warrant he was taken in custody in the present case on 11/05/2015. At his instance, the police and pancha were taken to a jeweller's shop at Rajasthan

where the appellant had sold the *Mangalsutra* and silver coins. The *Mangalsutra* melted in the form of ingot and silver coins were seized. The investigation was completed and the charge-sheet was filed. The case was committed to the court of Sessions and the appellant faced the trial.

4. During trial, the prosecution examined eight witnesses in the form of victim, her neighbour, panchas, medical officer and the Investigating officer. The defence of the Appellant was that, because of his marital discord, at the instance of his in-laws he was falsely implicated by the victim i.e. PW-1 in this case.

5. Learned Judge, after hearing the parties, considered the evidence and defence of the appellant and ultimately convicted and sentenced the appellant as mentioned earlier.

6. The prosecution case is based on the evidence of PW-1 Sony Sharma. She has deposed that, she was residing at Ulhas Niwas with her husband. Her two sons used to reside at Mumbai. She knew the Appellant. She had given his name as Prakash Sharma. She explained that, he was her sister's son's brother-in-

law. He used to visit her house. She did not know where he was residing. The incident took place on the 3rd day of *Bhadrapada* month. Her husband had left at 9.30a.m. She was alone in the house. At about 4.00p.m. the Appellant came to her house with his friend. She gave them tea and snacks. They spoke for some time. At about 5.30p.m., when she had gone to the kitchen to bring water, the Appellant and his companion put a bed-sheet on her head and pressed her neck. The appellant then gave blows of knife on her neck, stomach and other parts of the body. She fell down. The accused snatched her *Mangalsutra*. She became unconscious. The people from her building took her to hospital. She regained consciousness in the hospital. The police took down her statement and registered the F.I.R. The F.I.R. is produced on record at Exhibit 7. At the time of recording her statement, the Medical Officer was present there. PW-1 has deposed that, her gold *Mangalsutra* weighing 15 gms., silver coins, silver anklets and cash of around Rs.45000/- were taken away by the accused. She came to know about this later on and therefore, she gave her supplementary statement to the police. The police had shown the Appellant's

companion. She identified him. She has deposed that, when the Appellant had come to her house, he had written some name and phone number of one person on a chit. That chit was produced at Exhibit 8. She received back her silver coins and gold ingot which were recovered during investigation. She had identified the Appellant in the Court. She also identified three knives which were used to assault her and the *saree* which was on her person at the time of assault. She also identified the bed-sheet. She was hospitalized for 15 days; out of those, first 7 days she was in I.C.U.

In the cross-examination, she denied the suggestion that, she had not seen the accused who had put the bed-sheet on her face. She explained in the cross-examination that, bed-sheet was put on her head by the present Appellant. Both accused had come towards her from the front side and had put the bed-sheet on her face and head. She became unconscious after that. She regained consciousness after about 45 minutes. By that time, accused had left the house.

7. PW-3 Maya Mange was another important witness.

Though, she had not seen the incident, she was a neighbour. She has deposed that, PW-1's husband was working in a *saree* shop at Dadar and he was not at home from 10.00a.m. to 10.00p.m. PW-1 used to be alone in the house. She had heard some voice from PW-1's house in the evening at 6.00p.m. She left her house to buy vegetables. She saw two persons in front of PW-1's house. At 7.30p.m. she returned. PW-1's house was closed, but PW-1 called her. PW-3 opened the door, went inside and saw that PW-1 was in injured condition. There was blood in the kitchen. PW-1 told her about the incident and told her specifically that, her sister's relative had come to her house accompanied by one more person and they had robbed gold ornaments. After that, PW-3 telephonically called PW-1's son. PW-3 herself and others took PW-1 to hospital. PW-3 identified the knives which were lying at the spot. She also identified the *saree* and the bed-sheet.

In the cross-examination, only suggestion was put to her that she was deposing falsely because she wanted to help PW-1 as she was her neighbour. She flatly denied that suggestion. Apart from that, there is no significant cross-examination.

8. PW-2 Gajanan Padave was another neighbour, but he was examined as a pancha for spot panchanama. He deposed that, on 13/08/2014 he was called by the police for panchanama in the victim's house. He described the situation in the house. The spot panchanama was carried out in his presence. It is produced on record at Exhibit 11. He identified the knives, *saree* and the bed-sheet.

In the cross-examination, he deposed that, at the time of drawing of panchanama, PW-1 was in the hospital. The panchanama was carried out at 10.00p.m. He denied the suggestion that, he had merely signed the panchanama at the instance of police. The panchanama (Exhibit 11) describes that, there was pool of blood in the kitchen. Three knives were lying there. A *saree* and the bed-sheet were also lying at the spot. All those articles were seized. The panchanama was carried out between 10.10p.m. to 11.00p.m.

9. PW-4 Nirmal Soni was a jeweller doing his business at Marwad Junction in Rajasthan. He has deposed that, he knew the

Appellant. PW-4 used to sell gold and silver ornaments. The Appellant had come to his shop to sell a gold *Mangalsutra* and four silver coins on the pretext that his wife was ill. PW-4 has described the *Mangalsutra* as having black beads and gold pendent with an image of Lord Shrikrishna. There were four silver coins. He had paid Rs.5400/- to the Appellant. He has further deposed that, he had made the gold ingot from the gold ornaments and silver coins were kept in the same condition. Somewhere in May or June 2015 police came to his shop with the Appellant and the Maharashtra police. They were accompanied by panchas. PW-4 then produced gold ingot and silver coins. They were seized under panchanama. The panchanama is produced on record at Exhibit 17.

In the cross-examination, he deposed that the Appellant had not shown him any receipt. He denied other suggestions that the Appellant had not visited his shop and that he did not have any jewellery shop and that he was deposing at the instance of police.

10. In this context, the prosecution has also examined PW-5

Sachin Pawar. He was examined as a pancha to the panchanama under which PW-4 had produced the articles. PW-5 was also a jeweller at Marwad, State Rajasthan. On 11/05/2015, he was called by the police for carrying out panchanama. The appellant gave a statement in his presence about selling of those ornaments to PW-4. The memorandum statement was recorded. The Appellant, this pancha and police went to PW-4's shop and after that PW-4 produced those articles. They were seized. He identified the appellant who led them to the jewellery shop of PW-4.

In the cross-examination, he explained that, since he knew Marathi, he acted as a pancha. The memorandum statement and panchanama which are produced on record at Exhibit 17 bear his signature and support his deposition.

11. PW-8 Dr. Santosh Kembhavi was the Medical Officer who had examined the injuries of PW-1. He has deposed that, on 13/08/2015, in the evening, PW-1 was brought to the Casualty Ward by neighbours and relatives. She was conscious to give statement. PW-8 had put an endorsement on Exhibit 7 which was

her F.I.R. On her medical examination, he found that she had suffered following injuries:

1. Multiple incised wounds over left side of the neck of 1.2 cm x 1.5 cm x 0.2 cm, superficial to deep of 7 to 8 in numbers.
2. Incised wounds of approx. 1.2 cm. X 0.1 cm x 1 cm x deep over left side of neck & other injury of 0.7 cm x 0.1 cm x 0.5 cm x deep over left side of neck.
3. Superficial laceration 0.5 cm x 0.2 cm over left upper lip.
4. Abrasion 2 cm x 0.5cm. over left lateral side of neck.

All the injuries were fresh. They were caused by sharp object. They were grievous in nature and they were possible by knives. The injuries were life threatening. He issued the medical certificate which is produced on record at Exhibit 27.

In the cross-examination, he deposed that the injuries were caused about half an hour before the patient was brought to the hospital.

12. PW-6 P.S.I. Tanaji Kakade was attached to Vishnu Nagar

police station at the relevant time. He was directed to search for the Appellant. He had gone to Rajasthan in his search, but the Appellant could not be found. The police learnt that the Appellant was arrested by Marwad police station in another crime. Custody of the Appellant was then obtained in this offence on the basis of transfer warrant. In Rajasthan, the Appellant gave a memorandum statement, pursuant to which, gold articles were seized from the jewellery shop in Marwad. This witness identified the panchanama (Exhibit 17) in that behalf.

In the cross-examination, hardly anything is elicited apart from the mere suggestion which were denied by this witness.

13. PW-7 Nilkanth Patil was the Investigating Officer. He had visited the spot and had prepared the spot panchanama Exhibit 11. The Appellant was arrested after his custody was sought from Marwad police. The muddemal articles i.e. Appellant's clothes, knives and blood sample were sent for chemical analysis. He had filed the charge-sheet in the court. Again there was hardly any cross-examination of this witness.

14. Learned Judge considered this evidence and defence of the Appellant that he was implicated falsely at the behest of his in-laws because of his marital discord with his wife. Learned Judge believed the version of PW-1. He ignored minor discrepancies, considered the medical evidence and convicted the Appellant. While imposing sentence, he considered that the Appellant did not have criminal antecedents. The offence was committed out of greed of money and there were two daughters depending upon him. He also considered that the Appellant took benefit of victim's helpless condition. She was alone in the house and the appellant caused life threatening injuries. After considering these circumstances, the sentence of 10 years and fine of Rs.10000/- was imposed on the Appellant.

15. Learned counsel for the Appellant submitted that, there is discrepancy in the evidence of PW-1 and PW-3. PW-1 has stated that the incident had taken place at 5.30p.m. and PW-3 had seen two persons outside the house of PW-1 at 6.00p.m. PW-3 was not made to identify the Appellant in any test identification parade. Even in the Court, she was not made to identify the Appellant.

There was no linking evidence of hand-writing expert regarding hand-writing on the chit which was found at the spot. It is not clearly established whether the bed-sheet was put on her face from the front side. Otherwise, it was not possible for PW-1 to see the face of the accused, if the bed-sheet was put on her face from behind. Though, she had stated that the accused assaulted her on her stomach with a knife, there are no such injuries on her stomach. There is no supporting C.A. report on record showing that the saree and the bed-sheet, as well as, blood that was found at the spot was that of the victim herself. She had not given description of her Mangalsutra. PW-4 had produced the Mangalsutra with specific description having pendent with an image of Lord Shrikrishna. Therefore, it cannot be linked with the articles which were taken away from her house. The Appellant has given a plausible reason for his false implication. Learned counsel submitted that, all these factors should be considered in favour of the Appellant and he should be acquitted. Learned counsel for the Appellant further submitted that, considering the period which he had undergone and also considering the fact that, minimum

sentence provided U/s.397 of IPC is of 7 years, in case the Court upholds the conviction; the sentence be reduced from 10 years to 7 years.

16. Learned APP opposed these submissions. According to learned APP, the Appellant's presence was corroborated by the evidence of PW-3. She had seen two persons in front of the house of the victim – PW-1. This corroborated PW-1's deposition. PW-1 herself identified the Appellant in the Court. In any case, she was knowing him. Her deposition is supported by medical evidence which shows that, she had suffered serious injuries. Those could not be self inflicted injuries to implicate the applicant falsely. The recovery of articles at the instance of the Appellant was another incriminating circumstance.

17. I have considered these submissions. The evidence of PW-1 is quite clear. It is trust-worthy. The spot panchanama shows presence of blood in the kitchen. The saree and bed-sheet were also stained with blood. Though, no C.A. report is produced on record, the spot panchanama supports the version of PW-1. Apart

from that, her deposition regarding injuries caused to her is supported by medical evidence. She was immediately taken to the hospital. PW-8 Medical Officer had examined her immediately. He has described the injuries in detail. She had suffered serious injuries on her neck. She was in I.C.U. for 7 days. Therefore, it is sufficiently established that the incident had taken place. The victim had suffered serious injuries with a deadly weapon on her neck. So far as, articles are concerned, PW-1 in her F.I.R. has stated that the accused had taken away her gold Mangalsutra weighing about one and half tola. The F.I.R., in fact, described Mangalsutra having pendent with an image of Lord Shrikrishna. The Mangalsutra of the same description was sold to PW-4 by the Appellant, as per the evidence of PW-4. This is another strong circumstance against the Appellant. Thus, evidence regarding recovery of articles which is deposed by PW-2 and PW-5 also supports PW-1's evidence. The appellant was known to PW-1. She has described her relations. He was not a stranger. Therefore, there is no doubt about his identity either. Finding of a chit is not very significant in the backdrop of PW-1's deposition which is quite

reliable. The applicant was not arrested for a few months. He was arrested in this crime when he was already in custody in some other crime. He was arrested by Marwad police station and then he was taken in custody by transfer warrant. Immediately thereafter there was recovery at his instance. PW-1 has identified him in the Court. In any case, she was already knowing him and had specifically named him in the F.I.R. which was registered within a short time from the incident. The Medical Officer had given clear opinion that, she was in a position to give a statement. Thus, occurrence of the incident and the Appellant's involvement is proved by the prosecution beyond reasonable doubt. The evidence shows that, all the ingredients of Section 397 of IPC are fulfilled. Therefore, I am of the firm opinion that the learned trial Judge has not committed any error in recording conviction against the Appellant.

18. So far as, sentencing part is concerned, learned trial Judge has given his reasons for imposing sentence of 10 years. The minimum sentence provided U/s.397 of IPC is 7 years. Section 397 of IPC is aggravated form of Section 394 and 392 of IPC. Section

394 of IPC provides for punishment of imprisonment for a term which may extend to 10 years and also provides for punishment of imprisonment for life. Therefore, learned trial Judge could have awarded imprisonment for life, but he has shown leniency and has imposed sentence of 10 years, considering the fact that, PW-1 was a helpless victim, she was a relative and trusted the appellant. But the appellant had acted in a cruel manner out of greed of money. The nature of injuries indicated that the victim has luckily survived. She was in ICU for 7 days. The injuries were on vital part. Therefore, no further leniency can be shown to the Appellant.

19. In view of above discussion, the Appeal is dismissed.

(SARANG V. KOTWAL, J.)