

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

CRIMINAL APPEAL NO.825 OF 2019

Salman alias Sajjad Saleem Shaikh
Age : 28 years, Occ.: Embroidery
R/o: Room No.25, Shanti Nagar,
Mafatlal Zopadpatti, Kalwa (E),
Dist. Thane

At present in custody being C-lodged
in Nagpur Central Prison, Barrack No.7,
Nagpur.

.... Appellant

versus

1. State of Maharashtra
through the Public Prosecutor
Sessions Court, Mumbai

2. Tulsa Rama Singh
through Senior Inspector of Police
Nagpada Police Station, Mumbai.

.... Respondent

.....

- Mr. Abbas Z. Mookhtiar (Appointed Advocate) a/w Adnan A. Mookhtiar for Appellant.
- Mr. S. R. Agarkar, APP for the State/Respondent No.1.

CORAM : SARANG V. KOTWAL, J.
DATE : 13th OCTOBER, 2022

JUDGMENT :

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1. The Appellant has challenged the Judgment and Order

dated 26/10/2018 passed by the Additional Sessions Judge, Greater Mumbai, in Sessions Case No.873 of 2015. There were two accused in the present crime. The Appellant was the accused No.2. At the conclusion of the trial both the accused were convicted for the commission of offence punishable u/s 307 r/w 34 of the Indian Penal Code and were sentenced to suffer rigorous imprisonment for 7 years and to pay a fine of Rs.5,000/- and in default of payment of fine to suffer further rigorous imprisonment for one year. Both the accused were acquitted from the charges of commission of offence punishable u/s 37(1) r/w 135 of the Maharashtra Police Act. There is no challenge to this acquittal by the State of Maharashtra.

2. The prosecution case is that the victim Talsa Rama Singh was knowing both the accused. On 19/07/2015 at about 03.30 p.m. on some issue there was quarrel between the victim and the accused No.1. At that time, the accused No.1 held his head and the present Appellant inflicted a knife blow on his throat causing grievous injury. The accused No.1 was arrested on

the spot and the Appellant was arrested on 20/07/2015. In the meantime the victim was taken to Nair hospital. His friend P.W.1 Raju Sukhdev Kamble had accompanied him. The police recorded his statement and treated it as an FIR. The FIR was registered vide C.R.No.304/2015 at 07.00 p.m at Nagpada police station. The proforma of FIR shows that the information was received at 03.50 p.m. on 19/07/2015. After arrest of the Applicant he showed willingness to point out the place where he had concealed the weapons and his blood stained clothes. Those articles were recovered at his instance under Panchanama. The statements of witnesses were recorded. The investigation was carried out and the charge-sheet was filed. The case was committed to the Court of Sessions.

3. During trial the prosecution has examined 12 witnesses including eyewitnesses, the victim himself, the victim for recovery of articles, the medical officer to prove the injuries and the police officers.

4. The defence of the Appellant was of total denial. Learned Judge relied on the evidence of eyewitnesses and convicted and sentenced the Appellant and co-accused as mentioned earlier.
5. Heard Mr. Abbas Z. Mookhtiar, learned counsel for the Appellant and Mr. S. R. Agarkar, learned APP for the State.
6. P.W.2 Talsa Rama Singh is the victim in this case. He has deposed that on 19/07/2015 he along with P.W.1 Raju Kamble was going towards Madanpura from Mumbai Central at about 03.00 p.m. Both the accused met them near Madanpura. They were talking with him. There was quarrel. The accused No.1 Gulab Shaikh held his head by his hair. The Appellant gave blow with knife on his throat. He sustained bleeding injury. He fell down. People gathered there. He was taken to Nair hospital. Because of his injury he was unable to talk. He identified both the accused before the Court. He also identified the knife which was produced in the Court.

In the cross-examination he admitted that he was addicted to consuming drugs. But he denied that on the date of incident he was under influence of drugs. He denied that there was some cases pending against him. He denied that because of previous quarrels with both the accused, he had implicated them falsely. There were other houses near the place of incident. There were regular movement of people on the road.

7. P.W.1 Raju Kamble had accompanied the victim throughout the incident and to the hospital. His statement was recorded as FIR. He has described the incident in the same manner as is described by P.W.1. He deposed that the actual assailant was Gulab Shaikh. He had not named the Appellant in his deposition. But he has described him as Gulab's nephew. P.W.1 tried to catch the assailant, but he ran away. He then took the injured to Nair hospital. According to P.W.1 he went to police and narrated the incident to police. The police recorded his complaint. He identified the FIR, which is produced on record at

Ex.19. He also identified both the accused before the Court. He described them as Gulab and his nephew. He clarified that the person accompanying Gulab had inflicted the blow.

In the cross-examination he deposed that first he had taken the injured to Nair hospital. They reached at 03.15 p.m. After that he went for his work. He has clarified that he filed his report after about 30 minutes of the incident. He filed his report at Nair hospital. He had not visited the police station after the incident. The FIR proved by him substantially corroborates his deposition.

8. P.W.3 Mohammad Rizwan Shabbir Khan was examined as an eyewitness. But he turned hostile and did not support the prosecution case. The portion marked 'A' from his statement describing the incident and showing that he was an eyewitness is proved through the Investigating Officer recording his statement and it is marked as Ex.44.

9. P.W.4 Mohammad Kamrealam Abdul Kalam was another eyewitness who had turned hostile. His contrary portion mentioning the incident is proved through the Investigating Officer at Ex.45.
10. P.W.5 Noor Mohd. Shaikh was not declared hostile, but he had deposed that he had not seen who had assaulted the injured. According to him, the crowd at the spot had caught both the accused. They had also caught 2-3 other persons. He had seen that one person was running holding his throat. His evidence does not really help either the prosecution or the defence.
11. P.W.6 Mohd. Anwar Shaikh has deposed that at the time of incident he heard shouts that somebody's throat was slit. He went there and saw that the victim had suffered injuries on his throat. He was taken to hospital. Rizwan and others were trying to catch both the accused. The Appellant ran away but prior to that he threw the knife and his shirt inside an iron grill of a compound.

In the cross-examination he stated that police recorded his statement on 29/08/2015 and that his statement was explained to him in Hindi before his deposition was recorded in the Court.

Considering this admission his evidence becomes a little weak and therefore it need not be taken into consideration in the facts of this case.

12. P.W.7 PSI Santosh Byagehalli had received information about the incident. He had gone to Nair hospital and had recorded the statement of P.W.1. He had also prepared the spot panchanama. The accused No.1 was arrested at the spot and he was brought to the police station. This witness put him under arrest. He also produced spot panchanama at Ex.30.

13. P.W.8 Dr. Dilesh Arvind Mogre, was working at Nair hospital in ENT Department on the date of incident. He has

produced the case papers relating to the injured PW.2. They are produced on record at Ex.34. He was part of the team that provided treatment to the injured.

14. The medical papers show that the injured had suffered 10 x 3 cm long clean cut wound over anterior surface of neck. Skin, sub-cutaneous tissue and superficial muscle were cut. There was trans section of trachea at level of cricoid and first tracheal ring till posterior wall, sternocleidomastoid muscle on right side was cut, strap muscles were cut. There was injury on the right ear as well.
15. PW.9 PC - Sanjay Narsing Mahadik had carried articles to FSL.
16. PW.10 PC - Sajuddin Alluddin Mallik had publicised the prohibitory order against carrying the weapons between 03/07/2015 to 01/08/2015.

17. P.W.11 Bhagwansingh Thakur was a Pancha in whose presence, the Appellant expressed his willingness to show the place where the blood stained clothes and the knife were thrown. The recovery Panchanama was recorded in his presence and was produced on record at Ex.42.

18. P.W.12 PI Kusum Waghmare had conducted the investigation when the clothes and the knife were recovered. She has recorded statement of the hostile witnesses and the relevant portions from their statements were proved by her through Ex.44, 45 and 46. The C.A. Reports are produced on record at Ex.46. That shows that there was blood of inconclusive blood group on the knife. However, the covering letter for C.A. does not throw light on which clothes, blood of blood group 'A' was found. Therefore the C.A. report will have to be left out of consideration.

19. Learned counsel submitted that there is a major contradiction in the evidence of P.W.1 because he has deposed in

his examination-in-chief that he had gone to the police station and lodged his FIR. However, in his cross-examination he has admitted that after the incident he had never visited the police station. In fact, P.W.7 PSI Santosh Byagehalli has deposed that he had recorded statement of P.W.1 in Nair hospital.

20. Learned counsel further submitted that in the medical papers the name of the assailant is not mentioned. The Pancha for recovery of articles and clothes was a habitual Pancha and his evidence is not reliable. The knife and the clothes were concealed at a place which was accessible to all. He submitted that both the witnesses P.W.1 and P.W.2 were addicted to drugs and therefore reliance cannot be placed on their depositions regarding correct narration of the fact and correct role assigned to the accused including the Appellant.

21. Learned APP on the other hand submitted that the evidence of the injured and P.W.1 is sufficient to convict the Appellant. In addition, there is recovery of weapon and blood

stained clothes at the instance of the Appellant. He also submitted that the injury is serious and is on vital part. Therefore offence u/s 307 of IPC is made out.

22. I have considered these submissions. I do not find any discrepancy or any reason to doubt the evidence of the P.W.1 and P.W.2. In particular, the evidence of the victim himself assumes importance. He has clearly described the incident. He has mentioned both the accused. He has ascribed the main role to the Appellant. He has deposed that the accused No.1 had held him and the accused No.2 i.e. the present Appellant had inflicted knife blow on his throat. The accused No.1 Gulab Shaikh was caught at the spot by the crowd. Accused No.2, the Appellant, succeeded in escaping from the spot. But he was arrested on the next day.

23. P.W.2 has specifically named the Appellant in his deposition and he was knowing the Appellant. The evidence of P.W.2 is fully corroborated by P.W.1. He has described the

incident in the same manner. Only he has not named the Appellant in his deposition, but he has described the Appellant as nephew of the accused No.1 Gulab Shaikh. Both these witnesses have identified both the accused in the Court. In fact, the FIR lodged by the P.W.1 also names the Appellant. In his deposition P.W.1 has stated that the accused Nos.1 and 2 before the Court were the accused No.1 Gulab Shaikh and his nephew. Thus, he has consistently described the Appellant as Gulab's nephew.

24. The other eyewitnesses have not supported the prosecution case and their relevant statements are brought on record through the evidence of the police officer who had recorded it. However, even keeping aside their depositions, the evidence of P.W.1 and P.W.2 is strong enough in favour of the prosecution. Based only on this evidence, the prosecution has been successful in proving the case against the Applicant beyond reasonable doubt.

25. As far as the injuries are concerned, P.W. Dr. Dilesh Mogre has produced the medical papers. The injury and the damage caused because of the injury is described in detail in the medical papers. Injury was on the vital parts. It was long and it had cut vital tissues. Thus, offence u/s 307 of the Indian Penal Code is also clearly made out.

26. Considering the nature of the injury, there is no scope to even reduce the sentence imposed on the Appellant.

27. Thus, taking into account all these aspects of the matter, I do not find any merit in the Appeal. The Appeal is accordingly dismissed.

(SARANG V. KOTWAL, J.)