

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.303 OF 1997

Jaywant Ramchandra Sawant & Ors. .. Appellants

Versus

The State of Maharashtra .. Respondent

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Mr.Veerdhawal Deshmukh, Appointed Advocate for the Appellants.

Mr.S.R.Agarkar, A.P.P. for the State/Respondent.

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CORAM: BHARATI DANGRE, J.

RESERVED ON : 15th SEPTEMBER, 2023

PRONOUNCED ON: 12th DECEMBER, 2023

JUDGMENT:-

1. The present Appeal is filed by the Appellants, who stood convicted by the learned Sessions Judge, Raigad, Alibag on 20/05/1997 in Sessions Case No.181 of 1990, alongwith eight other accused persons. Out of the thirteen accused being tried under Sections 147, 148, 149 read with Section 307 of the Indian Penal Code (hereinafter referred to as, "**the IPC**"), five Appellants are convicted for committing the offence punishable under Section 326 read with Section 149 of the IPC and each of them is sentenced to suffer rigorous imprisonment (R.I.) for five years and pay fine of Rs.2,000/- each, in default, to suffer R.I. for one year. They are also convicted for the offence punishable under Section 148 of the IPC and sentenced

to suffer R.I. for one year and pay fine of Rs.500/-, in default to suffer R.I. for three months.

The sentences imposed are directed to run concurrently.

Rest of the eight accused stood acquitted of the charge under Sections 147, 148, 149 as well as Section 307 of the IPC.

2. The Appeal filed by the Appellants came to be admitted on 27/05/1997 and the Appellants were held entitled to be released on bail and the sentence imposed upon them was suspended.

During the pendency of the Appeal, Appellant Nos.2 to 5 are reported to be dead as per the police report and pursuant to the death certificate, which were produced before the Court on 06/08/2012, the Appeal against Appellant Nos.2, 3, 4 and 5 (Orig. Accused Nos.6, 10, 11 and 13) stand abated.

As a result, the Appeal is only prosecuted by Accused No.1-Jaywant Ramchandra Sawant.

Since the Appellant remained unrepresented, Advocate Veerdhawal Deshmukh was appointed to represent the Appellant and the paper-book was made available to him, so that he could effectively represent the Appellant.

The learned A.P.P. Mr.S.R.Agarkar advanced his arguments on behalf of the State, opposing the Appeal.

3. It is the case of the prosecution all the thirteen accused persons on 25/01/1990 formed an unlawful assembly and at about 3.30 p.m., in prosecution of their common object of

committing murder of one Yashwant Raghu Patil (PW 11), committed an offence of rioting, being armed with deadly weapons like sword, iron bar, stick etc. and, hence, they faced charge under Sections 147 and 148 of the IPC. The prosecution allege that they attempted to commit murder of Yashwant Raghu Patil, with such an intention or knowledge and under such circumstances that, if by that act, they had caused his death, they had been guilty of murder and on causing hurt to Yashwant, they committed an offence punishable under Section 307 read with Section 149 of the IPC.

4. On framing of the charge, all the accused persons pleaded innocence and chose to be tried.

5. In order to support the case of the prosecution, Yashwant Patil, the injured examined himself as PW 11 and he narrated the incident, which took place on 25/01/1990 at around 3.30 p.m., when he was sitting in front of Vasant Vihar Hotel at Pezari Naka. His wife Rekha and one Supriya Patil (PW 12) were to go to Alibag by S.T.bus and, since, they were to travel to Alibag by bus, he happened to be at Pezari Naka to help them to board the bus. At that time, from the side of Alibag, one Maruti van, which was described by him to be of biscuit colour, proceeding towards Khopoli stopped at Pezari Naka and 5 to 6 persons stepped out of it. He gave the names of the persons as Naresh, Sanjay and Kailas Dhumal, Nandkumar Mhatre, Jaya Sawant and Stivan.

The Appellant before me is, Jaya Sawant.

Naresh Dhumal, on uttering the abuses, approached him with an intention to eliminate him, when Nandkumar gave a blow of iron bar on his back. He started running away, but was chased by the accused persons and he was surrounded in the passage of laboratory of the school.

The sequence of events is narrated by the injured in the following words :-

“Thereafter while running followed me. They surrounded me in a passage of laboratory of the School. Kailas Dhumal raised a sword in his hand to gave blow on my chest and to avoid that blow, I raised my hand and that blow of sword hit on my left hand. Prakash Dhumal made attempt to beat me and that time I also raised my hand. The blow hit on my right hand. One blow hit on my right thigh. One blow also hit on my left knee. That blow was given by Jaya Sawant. Naresh Dhumal gave blow on my head on left side. Others also gave blows and I fell down while crying to save me. After some time police came there. Police lifted me and that time Rekha and Supriya also came in the school and they also assisted to me to lift me. They took me in a Govt. Hospital at Pezari. Doctor was not present there, so I was brought to Civil Hospital Alibag. I was unconscious when I was shifted to Alibag. On next day, I regained my conscious when I was admitted in the Hospital at Alibag. P.S.I. Mhatre recorded my statement on 26.01.1990 in the hospital.”

The injured (PW 11) attributed a blow on his left knee to the present Appellant and he identified the swords and iron bars, as the weapons of assault, which were produced before the Court and he also identified the accused before the Court as the assailants.

The injured (PW 11) was admitted in the Civil Hospital at Alibag for 21 days.

6. To corroborate the above version of the injured, the prosecution examined several witnesses and the prime witnesses are the persons from the police party, which was posted at Pezari Naka on the date of the incident in a bivouac shelter, as there was tension in Pezari Naka between the two groups, one lead by Peasants and Worker party and other led by Agri-Sena and Congress. The first set of witnesses are PW 3, PW 4, PW 5 and also PW 7. The second set of witnesses, for corroborating the version of the injured (PW 11) include PW 1, owner of the Vasant Vihar Hotel, where the injured was resting and PW 2, the waiter in the hotel. The third set of witnesses, include one Supriya Jaywant Patil (PW 12), who was present on the spot alongwith wife of the injured, Yashwant.

7. In order to ascertain, whether the aforesaid prosecution witnesses have corroborated the injured Yashwant, I must scrutinize the depositions of these witnesses minutely.

PW 1 and PW 2 are concerned, were present in Vasant Vihar Hotel at Pezari Naka, but they are unable to render any backing to the injured as PW 1, the owner of the hotel has deposed that the alleged incident had occurred some six to seven years back, and he do not remember the exact date.

Damodar Patil (PW 1) state that he was at the counter of the hotel and at that time Yashwant Raghu Patil alongwith two other persons were in the Varanda, sitting on the bench. He, however, told the Court at 10.00 a.m., Yashwant Master stood from the place where he was sitting and entered in his hotel and went towards the school building by the rear side door of the hotel, though he is not aware why he did so.

He did not support the case of the prosecution, as he states that except this, he has not seen any other incident and he is not aware as to what had happened later on. He was declared hostile and the Public Prosecutor cross-examined him, but nothing positive could be extracted from him.

Similar is the evidence of PW 2, who was working as waiter in the hotel. He was also declared hostile and when cross examined by the Public Prosecutor, he was confronted with his statement given to the police, that Yashwant Master ran towards the school from the hotel at around 3.30 p.m.. He was also confronted with the portion mark 'B' in his statement.

8. Another set of witnesses are the police personnel, present in the bivvi at Pezari Naka and the key witness is PW 3-PSI Kishorkumar Jadhav.

He depose that at around 3.30 p.m. on 25/01/1990, when he was present at Pezari Naka alongwith other police party members, one Maruti van crossed Pezari Naka and it is stated by him that hotel Vasant Vihar was at a distance of about 100 to 150 feet towards Pen side from their tent and Maruti van was parked in front of Vasant Vihar Hotel. One Nandkumar, Santosh and other unknown person alighted from the Maruti van. Nandkumar was having a hockey like stick, whereas accused Santosh was holding wooden log and third unknown person was having a sword. By shouting all the three went towards hotel Vasant Vihar, where Yashwant Master was sitting on bench. Thereafter, Naresh and Sanjay Dhumal also came out of the van and followed the three persons. Noticing these persons, Yashwant stood up and went inside the hotel.

PW 3 further deposed that they witnessed this incident from the tent and, thereafter, he alongwith other police staff, which included PW 4- ASI Prabhakar Kulkarni, PW 5- Head Constable Goma Bhoir and PW 7-PI Pralhad Sandanshiv, ran towards the hotel and noticed that Yashwant Master ran away towards school compound from the back side door of the hotel, as the High School building is situated at the back side of the hotel. He was chased by the accused persons, to be followed by the police officers. According to him, to the back side of that building towards left side, there is one another building facing south north and between these two buildings, there is passage and Yashwant went towards that passage, whereas the police team entered the building from the main entrance door parallel to the main road and they were confronted with a person having a sword and on noticing them, he threw the sword in the passage towards left side, where they were standing. The stainless steel sword was stained with blood and as per this witness, the person was caught hold on the spot and it is the case of the prosecution that this person is the present Appellant, Jayawant.

As per PW 3, the Appellant was caught hold by him in presence of P.I. Sandanshiv (PW 7). Accused Santosh and Nandkumar also came there and other police staff attempted to catch them, but they ran away towards the back side of the building.

9. What is most relevant in the version of this witness is, after he caught hold the present Appellant, he heard the cry of Yashwant (PW 11) as, "Bhausahab Marle". On hearing the

alarming voice, they approached Yashwant alongwith Jayawant and found that Yashwant Master was lying in the passage with bleeding injuries on his both hands and forehead. Therafter, the injured was taken to the hospital and the present Appellant, who was apprehended and was taken to Poynad police station by auto-rickshaw and he was handed over to the P.S.O. PW 3 lodged a complaint in the police station at 9.40 p.m. and it bears the signature of PSI Mhatre (PW 13), who conducted the investigation in the subject C.R.

PW 3 has testified that accused persons were known to him because before this incident, Yashwant Master had filed complaint against them during Lok Sabha election. He identified the sword, which was thrown by the Appellant in the passage of school, which was produced as Article No.4 and he also identified him while in the dock.

10. His cross-examination is exhaustive and has to be scrutinized minutely.

He has admitted that at the relevant time, when the incident took place, the school was working. He admit that only three persons came out of Maruti van and entered Vasant Vihar Hotel and, thereafter, three persons came out and even they entered the hotel. He give the following admission as far as the present Appellant is concerned:-

“In my complaint I have mentioned two persons who entered the Hotel, but name of third person has not been mentioned in this complaint. Because that time that third man was not known to me.”

He has further deposed that as per his complaint, accused Naresh and Sanjay were not the persons, who entered the hotel, following Yashwant Master and according to him, Yashwant was chased by three persons, who were followed by the police staff.

Now in the cross-examination, he state that some police staff chased the assailants, who were chasing Yashwant Master, but he alongwith PW 4 and PW 7 entered from the main entrance door of the school and came in the corridor, in front of the Head Master's office. At that time, one man came there with a sword and two other assailants followed him and they all came in the corridor and ran away from the verandha, indicated in the map. This spot, according to him, opens in the open space located to the west side of the school building and after catching hold of the present Appellant, he entered the passage to notice Yashwant Master in the entrance door of the Biology hall and he was called by Yashwant Master to inform that he was assaulted, though he did not disclose the name of the Appellant.

According to this witness, Yashwant was not in a condition to speak and by leaving him in the care of PW 7, he left the school building with the apprehended accused.

11. What is relevant to note is the version of this witness that the school was in operation at that time and the teachers and the students were also present, but he do not know, whether any staff members or students were present in the Biology hall, as he did not enter the Biology hall. This witness

did not offer any explanation for not giving intimation of the incident till 9.40 p.m., when immediately after the incident and on the present Appellant was having been apprehended, he went to the police station.

In the cross-examination, he categorically admit that he had not investigated nor conducted any inquiry personally about any complaint lodged by Yashwant Master and, therefore, there was no occasion for him to know the present Appellant and it is only because he had disclosed his name to be Jayawant, he became aware of that.

12. Now, when I turn to the evidence of other police team members, the contradictions are glaring and cannot be ignored.

PW 4-Prabhakar Kulkarni, Assistant P.S.I., deputed at Pezari Naka deposed that the van was parked in front of the hotel at about 3.30 p.m. and he noticed that 4-5 persons came out of the van and they were shouting and, hence, alongwith the police team, including PW 3, he rushed towards the hotel, but nobody was found there. He, however, deposed that he cannot say to which side they ran away. But, he again state that the accused went towards the back side of the building and, thereafter the police staff also rushed behind them.

Now, here he states that one accused was found in varhanda with sword in his hand and he was Jaywant. His narration of the incident is as under :-

“One accused was found in the Varanda. He was having sword in his hand. On enquiry, he disclosed his name as Jaywant. Sword was found lying in that passage. We Police Officer

brought that accused on the road out of the school building. P.S.I. Jadhav and Constable Bhoir took that accused to Police Station.”

His version in no way match with that of PW 3, who has stated that he had entered from the main gate of the building and found the present Appellant with sword in the passage.

13. Now turning to testimony of PW 5-Goma Bhoir, he gives yet another version.

He depose that they noticed a Maruti van at 3.30 p.m.. According to him, 5-6 persons came out of the van and they were having swords and sticks. They rushed in the hotel, to be followed by the police staff and they chased them, as they ran towards High School building.

Now, what PW 5 deposed is of great significance, as he contradicts PW 3 and PW 4.

“When we were on the ground of th e school, one man come in front of us, having a sword in his hand. He thrown away sword in his hand on the ground. Black colour bush shirt and white colour pant was on his person. P.S.I. Jadhav caught hold that man. The man who was caught hold by us disclosed his name as Jayawant Sawant. P.S.I. Jadahv took Jayawant to Police Station.”

The version of PW 4, is PSI Jadhav and Constable Bhoir took him to the police station, but Bhoir himself do not confirm to his statement that he accompanied PSI Jadhav to the police station.

Another contradiction in the version is, PW 4 has deposed that Maruti van was taken to the police station by PSI

Jadhav and the slippers and chappals were found to be lying in the verandha of the school building, whereas Constable Bhoir (PW 5) state that one hockey stick was found in the Maruti van and 5-6 chappals were found on the ground floor of the school building. It is PW 5, who state that pool of blood was lying in the passage of the school building.

14. Another witness from the police party is PW 7-P.I. Pralhad Sandanshiv, who noticed a biscuit colour Maruti van coming at Pezari Naka and which stopped at distance of 100 to 150 ft. from them and 5-6 persons alighted from the van, who were holding sword and sticks like hockey stick. They entered the hotel shouting and, therefore, even the police team entered the hotel, came out of the back door of the hotel and also entered the school building, when they noticed one person with sword. Upon seeing them, he had dropped the sword from his hand and he was caught hold by PSI Jadhav. He, for the first time, state that there were blood stains on his pant and he directed PSI Jadhav to take the man to the police station.

What is relevant is, even PW 7 state that after the present Appellant was apprehended, a call for help was given by some person and they could hear the voice coming from the school building and, therefore, he went to that man, who was in front of laboratory building, with bleeding injuries on his both hands and head and he was informed to be Yashwant Master.

As per PW 7, PSI Jadhav took accused in the police station and Maruti van was also taken into custody.

15. PW 7 was the senior most officer amongst the police persons present at Pezari Naka. In the cross-examination, he admit that he had not examined Maruti van, after it was taken to the police station.

According to him, when the police team came in the compound of the school building from the back side door of the hotel, they could not see the persons whom they followed and none of them was found in the compound of the school. When they entered the school building to track these persons, one man came from front side and he was caught by PSI Jadhav and was taken to the police station.

He state that alongwith the apprehended persons, he and PSI Jadhav took round of the building and noticed that some maramari had taken place in the building, but no inquiry was made as to who assaulted whom and except the man caught hold by them, no other persons whom they had chased was found in that building.

16. In order to have the idea about the location of the spot, so that the evidence of the three sets of witnesses is appreciated, PW 6- Balaram Patil, Circle Officer, Poynad prepared a map on the information supplied by the police officers and even he had visited the spot of the offence, which was shown to him by the police. The map is exhibited as Exh.68 and this map give a clear idea of the spot of occurrence of the event.

The orange colour in the map describe the Biology lab, where Yashwant was found in an injured condition and it also indicate the spot, where the present Appellant was

apprehended and also the place, where the sword was dropped by him.

Perusal of the aforesaid exhibit would make the version of PW 3, PW 4, PW 5 and PW 7 more relevant, as it offers an opportunity to ascertain the veracity of the incident.

As per PW 3, he alongwith two police personnel i.e. PW 5 and PW 7 entered the school building from the main entrance, which is parallel to the road and as soon as they entered, they were confronted with the present Appellant, who later on gave his name as Jaywant. This is the location, where he was apprehended and the place where sword was found lying is at the very entrance and after he was apprehended, the shouts for help were heard from Yashwant and he was found lying in an injured condition in the Biology lab, which is indicated with pink colour.

From this set of four witnesses, it is clear that the Appellant was apprehended first and then the apprehending team heard the shouts from the injured in Biology lab and none of them has deposed that the Appellant had assaulted Yashwant. There is also inconsistency in the version of PW 3 and PW 7, as PW 7 state that the police group did not notice any of the person, who ran towards the school and according to him, 3-4 persons ran away, but they could not be apprehended and when they were coming out of the building by taking Jaywant, some person gave a call, so he approached the place from where the voice was heard, and it was in front of laboratory building and PSI Jadhav told him that he is Yashwant Master, who was lying in a bleeding condition.

One thing is clear that none of these witnesses have seen the present Appellant as an assailant.

17. Turning to PW 12-Supriya Jaywant Patil, who claims to be present alongwith Rekha Yashwant Patil at Pezari Naka, she noticed Yashwant Master running towards the compound of the school, to be chased by Naresh Dhumal, Prakash Dhumal, Parshuram Mhatre, Jaywant Sawant, Nandkumar Mhatre and four-five others and even she alongwith Rekha went towards the school building. From the window of the laboratory hall, she had seen Naresh Dhumal, Nandkumar Mhatre, Jaya Sawant and Prakash Dhumal beating him. They started shouting and the police arrived at the spot and hold Jaya Sawant with a sword in his hand. In the cross-examination, when she was asked whether there was any window to the laboratory, she state that she do not remember so, but categorically state there were windows in the eastern wall to the laboratory and she watched the incident from the window.

PW 12 completely contradict the second set of witnesses, who have categorically deposed that they caught the present Appellant, as soon as they entered the building and no one has seen he assaulting, whereas if PW 12 is to be believed, then he was caught out of the Biology laboratory and this place is at a distance from the place shown in the map from where the Appellant was apprehended and he dropped the sword.

18. The version of these three sets of witnesses is thus contradicting to each other and juxta posed against the version of the injured, the case of the prosecution becomes

more doubtful. PW 11- Yashwant has deposed that from the van, 5-6 persons emerged and they approached him, by saying that they would kill him. At that time, Nandkumar Mhatre gave blow of iron rod on his back and the assailants followed him, when he started running.

The blow by Nandkumar Mhatre, when the assailant approached him do not find mention in the deposition of the police party or PW 12.

Yashwant, the injured, has further stated that he was surrounded in a passage of laboratory of the school and Kailas raised a sword to give blow on his chest and when he avoided that, he was hit on his left hand and even Prakash Dhumal gave a blow, which landed on his right hand and right thigh. For the Appellant, he state that the blow was given by him on his left knee. Pertinent to note that Prakash Dhumal is acquitted, on finding being rendered that there is no evidence to prove his complicity.

As per PW 11, Naresh gave blow on his head and others also gave blows and he fell down and after some time, police came there and at that time, Rekha and Supriya also came in the school and they lifted him. As per PW 11, he became unconscious and was shifted to the Alibag Hospital and only on the next day, he regained his consciousness.

In the cross-examination, the injured categorically deposed this when his statement was recorded by the police, he has not disclosed that Accused Jaywant gave blow on his knee joint and for the first time, he has disclosed it before the Court.

19. PW 14- PSI Shankarrao Patil had recorded the statement of Yashwant and he has deposed that Yashwant had told him that attack on him was in the compound of the school building and the said fact as recorded in his statement, which was marked as portion 'A'. He state that Yashwant had not stated that the assault happened in the passage in front of the laboratory.

Various omissions in the statement of Yashwant are proved through the said witness, who also categorically state that Yashwant has not stated before him that Jaya Sawant and Stivan were amongst the persons, who came on the spot by Maruti van and a categorical omission of the present Appellant and Stivan being his assailants is also proved through this witness.

20. The Medical Officer (PW 9), who examined the injured and issued the injury certificate, in cross-examination admit that when the injured approached him, he was in a condition to speak and he was in a fully conscious condition, in contrast to the statement of Yashwant that when he was admitted in the hospital, he was unconscious.

21. From the entire evidence, which has been led before the Sessions Court, the involvement of the present Appellant as an assailant, is not established by the prosecution. He being an assailant, has come from the testimony of PW 11, which is proved as an omission through PW 14, the Investigating Officer.

There is also contradiction about the place of assault and about he raising an alarm, after he was assaulted. In the cross-examination, he has admitted that he never given the name of the Appellant as an assailant in the statement recorded by the police and apart from this, the distinct version of the assault and the assailants as well as the place of assault has made the case of the prosecution doubtful, as the role attributed to the Appellant as an assailant, is not established through any cogent evidence. Though his presence in the school premises is established, as PW 3 has deposed that he was apprehended as soon as the police team entered from the gate of the school building, but his presence at the place of assault, i.e. in the Biology laboratory is doubtful and, since, the shriek which came from Yashwant was heard by the police team after they had apprehended the present Appellant, which make it evident that he was not the assailant, though he may have been carrying a sword. Apart from this, the recovery of the sword from the spot is also doubtful, as the panch on the recovery did not support the case of the prosecution and in fact, as per the Investigating Officer, the sword is brought to the police station by some persons, when accused Leeladhar and Ashok were in custody and was seized by recording panchnama.

22. The prosecution has thus failed to establish the charge under Sections 307, 147, 148, 149 of the IPC and in absence of the charge levelled against the present Appellant having been established by the prosecution through cogent and reliable evidence, the Appellant is entitled to benefit of doubt. The

impugned judgment has failed to consider the lacunae in the case of the prosecution and, hence, it cannot be sustained.

By quashing and setting aside the impugned judgment dated 20/05/1997, passed in Sessions Case No.181 of 1990, the Appellant is acquitted of the charges levelled against him. Since he is on bail, his bail bond stands cancelled.

The Appeal is allowed in the aforesaid terms.

23. Before parting with the judgment, I would like to place on record the words of appreciation for Advocate Veerdhawal Deshmukh, who on being appointed, has effectively represented the case of the Appellant. The Legal Services Authority is directed to release the legal remuneration due and payable to him within a period of six weeks from today.

(SMT. BHARATI DANGRE, J.)