

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

CRIMINAL APPEAL NO.848 OF 2018

Farid Shaikh @ Firoz Shaikh
s/o Mohd. Ahmed Shaikh @ Yusuf
Aged 25 yrs., Occ : Nil
R/o: Sangam Nagar Zopadpatti,
Near Kirana Shop, Antop Hill,
Wadala (E), Mumbai – 37
(At present – Byculla prison jail)

.... Appellant

versus

1. The State of Maharashtra

2. The Senior Inspector of Police
Dadar Railway Police Station

.... Respondent

.....

- Mr. Aniket A. Gawand i/b. R. P. Javanjal, Advocate for Appellant.
- Mr. S. R. Agarkar, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 09th JANUARY, 2023

JUDGMENT :

1. The Appellant has challenged the Judgment and Order dated 10/05/2018 passed by Additional Sessions Judge, Greater Mumbai, in Sessions Case No.695 of 2016. The Appellant was convicted for commission of offence punishable u/s 308 of the

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Indian Penal Code and was sentenced to suffer rigorous imprisonment for 7 years. He was also convicted for the offence punishable u/s 135 r/w 37(1)(3) of the Maharashtra Police Act and was sentenced to suffer simple imprisonment for 1 year and in default of payment of fine to suffer simple imprisonment for 15 days. He was acquitted from the charges of commission of offence punishable u/s 85(1) of the Maharashtra Prohibition Act. Charge u/s 307 of the Indian Penal Code was also framed against the Appellant besides other charges. But he was convicted u/s 308 of the Indian Penal Code instead. Both the sentences were directed to run concurrently. He was given set off u/s 428 of Cr.P.C.

2. The prosecution case is that, on 17/07/2016, the first informant Pooja Balkrishna Pakhare was walking on a platform at Dadar Railway Station (Central). The Applicant was present at the door of a local train. The local train was moving. The Appellant wielded a knife in the air, thereby causing injury to the neck of the first informant. The Appellant got down at

Matunga railway station and climbed another compartment. P.W.8, who was also travelling in the same train, saw all this. He got down at Sion Railway station and climbed the same compartment where the Appellant had climbed. He caught the Appellant and with the help of others, the Appellant was brought down on the platform. The police came there. He was taken to the police chowky. In the meantime, the first informant arrived at Sion railway station on the same platform in another local train. She identified the Appellant. The Appellant's clothes were seized. He was found carrying a knife. It was seized. The first informant was sent for medical treatment. Her FIR was registered vide C.R.No.174/2016 at Dadar railway police station. The Appellant was put under arrest. Statements of the witnesses were recorded. Various Panchanamas were recorded and at the conclusion of the investigation, the charge-sheet was filed. The case was committed to the Court of Sessions.

3. During trial, the prosecution examined in all 12 witnesses, including the first informant and the P.W.8 as the

eyewitness. Besides them, different Panchas, Medical Officer and the police officers were examined. The CCTV footage of the platform at Dadar railway station was procured and produced on record. However, when the DVD was played in the Court room, it did not show anything. The defence of the Appellant was that he had not committed any offence and he was implicated falsely. He admitted that he was travelling in the same train, but he had done nothing. Somebody else had committed that offence and he was falsely implicated in the case.

4. Learned Trial Judge considered the evidence and the statement of the Appellant. He recorded the finding that the offence u/s 307 of the IPC was not committed, but the Appellant had committed an offence u/s 308 of the IPC. He then recorded his findings and his order of conviction and sentence.

5. The important witness in this case is P.W.1 Pooja Pakhare. She has deposed that she had gone for a picnic to Virar with her friends in the morning of 17/07/2016. While returning

from Virar, she boarded the Virar to Churchgate train at 07.10 p.m. She got down at Dadar at 8.20 p.m. She was walking on the platform No.2. At that time, a local train to Kalyan had stopped at that platform. She saw a person with something in his hand. He was in the train. The train started moving. She realized that the said person had given a blow of something on her neck. She sustained bleeding injury. The passengers on the platform advised her to go to a hospital. She waited for some time as she was frightened. She allowed one more local train to pass and then caught the next train for going to Sion as she was resident of Sion. She got down at Sion railway station. At that time, she saw that one person was caught by the mob and that person had some instrument like knife in his hand. She identified him as the same man who had caused injury to her neck. He was taken to police chowky at Sion platform. She narrated the incident to the police officer. She gave her complaint. It is produced on record at Ex.22. She was taken to Dadar railway station for showing the spot of incident. She identified the Appellant in the Court. She produced her blood

stained clothes on the next morning before the police. Her FIR at Ex.22 substantially corroborates her version. It was registered at 01.42 a.m. in the night between 17/07/2016 and 18/07/2016. It was registered after P.W.1 was given some treatment at Sion hospital. The FIR mentions that the police had asked the Appellant his name. At that time, he had told his name as Firoz Yusuf Shaikh. P.W.1 had also given details of her name and address which are mentioned in the FIR.

In the cross-examination she stated that the blow was sustained by her when the train started. She was walking on the platform at that time. She identified the assailant at the railway platform of Sion railway station. She had told the police that he was the same assailant. She denied the suggestion that she did not identify him and came to know about him from the other passengers that he was the assailant. She volunteered that she had seen the assailant as he had got in the train when the train had started. In the FIR, she had not mentioned that the knife was seized by the police in her presence.

6. P.W.8 Sumeet Aarak was an eyewitness to the incident. He has deposed that he boarded the Kalyan local train from Dadar at about 08.30 p.m. His friend boarded the ladies compartment. As the train started, one person took out a knife and had moved that knife in the air. He saw that a girl was walking on the platform. The person with the knife was standing at the door of the next compartment. P.W.8 was also standing at the door of another compartment. The person with the knife gave blow on the neck of the girl walking on the platform. The other passengers started shouting. The train stopped at Matunga station. The assailant got down from the train and again boarded the train. But this time he boarded ladies compartment, in which P.W.8's friend was travelling. P.W.8 heard shouts from the ladies compartment. The train reached Sion station. As the train slowed down, P.W.8 and others got down from the train and straight away went to the ladies compartment and caught the assailant. He was dragged out of the train on platform No.1. The mob started assaulting him. The police came there. Within

3-4 minutes P.W.1 came there in another local train. She came towards them. She saw the person who was apprehended by them. She informed the police. She had sustained bleeding injury on her neck. The assailant gave his name as Firoz Shaikh. The police took P.W.1 to hospital. P.W.8 then went to police chowky at Sion railway station along with the Appellant. On personal search of the Appellant, a knife was recovered. Then he was taken to Dadar railway police station. There were some minor omissions pointed out to him from his police statement. He had not stated before the police that the Appellant had boarded the ladies compartment. The word 'ladies' was missing from his police statement. Apart from that, there is hardly any effective cross-examination.

7. P.W.2 Salauddin Daruwala was the Pancha in whose presence the clothes of the victim were seized at about 09.30 a.m. on 18/07/2016. It was a 'T' shirt and a handkerchief.
8. P.W.3 Sundar Krishna Naidu was a Pancha in whose

presence, the Appellant was arrested at 09.00 p.m. on 17/07/2016. At that time, the knife was recovered from his person.

9. P.W.4 Anand Anil Sande was another Pancha in whose presence, the blood stained clothes of the P.W.1 were seized at about 07.00 a.m. on 18/07/2016. The Panchanama is produced on record at Ex.31. Those clothes were blood stained. Ex.32 was a Panchanama of CCTV footage. It was admitted by the defence. The CCTV footage was of the railway platform of Dadar railway station, where the incident had taken place in between 08.26 p.m. to 08.30 p.m. However, the prosecution examined P.W.12 Raja Shriniwas Mulakala, who was a railway Engineer to prove the recording of the CCTV footage on a DVD. But when this DVD was played in the Court, it was found to be blank. Therefore this particular circumstance was not held against the Appellant.

10. P.W.5 Dr. Gopi Shankar, had examined P.W.1. She stated that P.W.1 had sustained injury on the neck of the size 8 x 1 x 0.5

cm. She was treated as an outdoor patient at Sion hospital. It was a simple injury. The medical certificate is produced on record at Ex.35.

11. P.W.6 Police Naik Mangesh Ayare, was examined to prove that prohibitory order was issued by the Commissioner of Police, Mumbai, on 04/07/2016 and it was pasted at railway station from 07/07/2016 onwards. This evidence was accepted by the Trial Judge.

12. P.W.7 Sachin Rajaram Honkhambe was on duty at Sion railway station at the relevant time. When he was present on the platform, he saw that the mob was beating a person. P.W.8 had caught that person. P.W.7 went there and took that person in their custody. He was the Appellant. Within a short time, P.W.1 came there. She had sustained injury on her neck. She pointed towards the Appellant and informed that he had assaulted her. P.W.1 and the Appellant were taken to police chowky. A knife was recovered from the Appellant's person.

13. P.W.9 ASI Laxman Tukaram Mhaskar had recorded the statement of P.W.1 and registered the offence.

In the cross-examination he stated that the Appellant was in the police lockup throughout the night after his medical examination was done. When the complaint was recorded, the Appellant was present in the police station.

14. P.W.10 ASI Dashrath Ganpatrao Shinde had also gone to the platform where the Appellant was apprehended by the mob. He made enquiries with the P.W.1. Then they went to the police chowky. This witness sent the P.W.1 with PC Honkamble to Sion hospital. This witness then took personal search of the Appellant. A knife was seized from his person.

15. P.W.11 PI Dattu Namdev Shinde, was the Investigating Officer. He prepared the Arrest Panchanama. He conducted to the Spot Panchanama at Dadar railway station. During

investigation, it transpired that the Appellant had given a wrong name. Therefore they collected his school certificate. Thereafter it was revealed that the Appellant's correct name was Farid Mohd. Ahmed Shaikh. He also collected the CCTV footage and collected the certificate issued in respect of that footage. The investigation was completed and the charge-sheet was filed by this witness.

16. As mentioned earlier, P.W.12 Raja Shriniwas Mulakala was the Engineer with the Railway. He had recorded the CCTV footage on DVD and had given certificate u/s 65-B of the Indian Evidence Act.

This in short is the evidence led by the prosecution.

17. Heard Mr. Aniket A. Gawand, learned counsel for the Appellant and Mr. S. R. Agarkar, learned APP for the State.

18. Learned counsel for Appellant submitted that the evidence shows that P.W.1 herself had not seen the Appellant actually assaulting her. She had not made any complaint

immediately to Dadar police station. There is delay in lodging the FIR. The knife was not seized in front of her. The commission of offence by the Appellant was told by the other people to the police officer. The C.A. report does not show that the knife was blood stained. It was a simple injury and therefore offence u/s 307 or 308 of IPC is not made out. The Appellant was not caught immediately at Matunga Police station. P.W.8 was a chance witness. He was not reliable. The DVD produced before the Court was blank and therefore adverse inference be drawn in that respect.

19. Learned APP opposed these submissions. According to him, the evidence of P.W.1 is corroborated by evidence of P.W.8. The Appellant was caught immediately at Sion railway station and therefore there was no dispute about his identity. He was caught by the mob. P.W.8 had seen the entire incident. The Appellant was found with a knife. There is no explanation as to why the Appellant had carried the knife.

20. I have considered these submissions. The main evidence in this case, of course, is that of the P.W.1 and P.W.8. P.W.1 has clearly described the incident. She was walking on the platform. The Appellant was standing at the door and from the moving train, he gave blow with knife on her neck. It had caused injury which was 8 cm in length. Therefore, though it is described as a simple injury, it was on the vital part caused with a deadly weapon and therefore it cannot be said that only a minor offence was committed.

21. P.W.8 has described the further incident because he was travelling in the same train in the next compartment. He had actually seen the assault. He had seen that the Appellant had got down at Matunga railway station and had boarded another compartment. There were shouts from that compartment. Therefore at Sion station, P.W.8 and others entered that compartment and caught the Appellant. He was brought down on the platform at Sion railway station. Immediately, the police rushed there. The evidence of the police officers also

corroborates the version of P.W.8. Within a short time, P.W.1 arrived there in another local train. All these events corroborate each other and the evidence of P.W.1 and P.W.8 is supported by the two police officers, who had reached the platform when the Appellant was caught by the mob. After that, the Appellant was taken to police chowky. His personal search led to the recovery of weapon i.e. knife. Though C.A. report does not show presence of blood, the prosecution case is that it was a slash injury and the knife was kept in the pocket of the pant. The pocket of the pant does show presence of 'A' group blood, which was the same group of the P.W.1. Therefore not finding blood on the knife in this particular case, would not affect the prosecution adversely. In fact, finding of the knife with the Appellant itself is an incriminating circumstance. The Appellant has not offered any explanation and it corroborates the evidence of P.W.1 and P.W.8. Within a short time he was taken to police station and the knife was immediately recovered. There is no delay in all these steps and therefore there was no scope for concoction or creation of any false evidence.

22. The other corroborative piece of evidence i.e. CCTV footage is held to be not proved by the learned Trial Judge by giving valid reasons. He has discussed as to how the DVD was blank. No acceptable reason was offered by the prosecution. However, it was only a corroborating piece of evidence. Even leaving aside that particular piece of evidence, the prosecution has been successful in establishing the guilt of the Appellant beyond reasonable doubt based on the evidence of P.W.1 and P.W.8 and the other police officers.

23. Learned Trial Judge has convicted and sentenced the Appellant u/s 308 of the IPC and not u/s 307 of the IPC. There is no challenge to that particular finding made by the State by way of Appeal against Acquittal. Even otherwise, the fact remains that the Appellant had committed the act causing injury on the neck of the victim i.e. P.W.1. Therefore, ingredients of section 308 of IPC are proved in any case. There is nothing to show that the Appellant was knowing the P.W.1. Therefore, the

offence assumes more seriousness because it was committed in a crowded place and an innocent passenger was needlessly assaulted. Therefore, there is no further scope to show leniency as far as sentence is concerned. The offence u/s 135 of the Maharashtra Police Act is also held to be proved. Learned Judge has given sufficient reasons for that findings.

24. Considering all these aspects, I am of the opinion that the prosecution has proved its case beyond reasonable doubt. I do not find any merit in the Appeal. The Appeal is accordingly dismissed.

(SARANG V. KOTWAL, J.)