

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

CRIMINAL APPEAL NO.706 OF 1999

Kisan @ Babu Narhari Sadafule	...Appellant
Versus	
The State of Maharashtra	...Respondent

Ms Trupti Khamkar, Appointed Advocate for the Appellant.
Mr. Sukanta Karmakar, APP for the Respondent/State.

CORAM : N. R. BORKAR, J.
DATE : 08.08.2024.

ORAL JUDGMENT

1. This appeal is filed against the judgment and order dated 4.11.1999 passed by the Additional Sessions Judge, Solapur in Sessions Case No.136 of 1999.

2. By the impugned judgment and order, the Trial Court convicted the the appellant for the offences punishable under sections 307 and 326 of the Indian Penal Code (for short 'IPC') and Section 37(1) read with Section 135 of Bombay Police Act and sentenced him to suffer maximum rigorous imprisonment for 7 years.

3. It is the case of prosecution that on the date of incident which took place on 21.5.1999, at about 1.00 a.m., the present appellant assaulted the injured P.W.3 Ankush, P.W.4 Nagesh and P.W.5 Raju by means of axe and attempted to kill them as he was suspecting that they had an evil eye on his wife.

4. I have heard the learned appointed counsel for the appellant and the learned APP for the respondent/State.

5. The learned counsel for the appellant submits that at the time of alleged incident, the injured were sleeping in the open area near the house of P.W.3. It is submitted that the alleged incident took place in the dead of the night and there is no evidence to show that there was a source of a light sufficient enough to identify the assailant. It is submitted that prosecution has not examined any independent witness. It is further submitted that there are material omissions and contradictions in the evidence of witnesses. The learned counsel for the appellant submits that considering the overall facts and circumstances, the trial Court ought to have granted benefit of doubt to the appellant.

6. On the other hand, learned APP for the respondent/State submits that in absence of any evidence of false implication, the trial Court has rightly accepted the evidence of injured witnesses. It is submitted that in addition to the evidence of injured witnesses, there is a corroborative evidence in the form of recovery of axe at the instance of appellant. It is submitted that the trial Court has rightly convicted the appellant and thus no interference is called for in the impugned Judgment and order.

7. I have perused the evidence on record. The evidence of the injured (P.W.3 to P.W.5) to the extent that they were assaulted by axe has not been challenged. The only defence of the appellant is that the injured were addicted to gambling. He used to object to their gambling activity and thus they were annoyed with him. According to him as they could not identify the real assailant they made a plan to falsely implicate him in the alleged crime. However, there is nothing in the evidence of the injured to hold that they were not able to identify the real assailant. There is no evidence on record to show that injured were addicted to gambling. Considering the overall evidence

on record, no interference is called for in the impugned judgment and order. The Appeal is dismissed.

(N.R. BORKAR, J.)