

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

CRIMINAL APPEAL NO. 1192 OF 2022

Ravikant Chandrakant Jatti ..Appellant
Versus
State of Maharashtra & Anr. ..Respondents

**WITH
INTERIM APPLICATION NO. 2312 OF 2023
IN
CRIMINAL APPEAL NO. 1192 OF 2022**

Mr. Vishwasrao S. Deokar for Appellant.
Mr. Jaydeep D. Mane (Appeared through V.C.) for Respondent No.2.
Ms. Ranjana D. Humane, APP for State/Respondent.

**CORAM : SARANG V. KOTWAL, J.
DATE : 25 SEPTEMBER 2024**

ORAL JUDGMENT:

1. The Appellant was the accused before the Additional Sessions Judge, Solapur, in Sessions Case No.83 of 2017. The learned Judge, vide his Judgment and order dated 17.11.2022 convicted the Appellant for commission of offence punishable U/s.307 of the I.P.C. and sentenced him to suffer R.I. for 7 years and to pay a fine of Rs.1,000/- and in default to suffer

imprisonment for one month. The Appellant was acquitted from the charges U/s.326 of the I.P.C. The Appellant was directed to pay compensation of Rs.50000/- to the informant within two months from the date of the order, U/s.357(3) of the Cr.p.c. and in default the appellant was directed to undergo further imprisonment for six months. He was granted set off U/s.428 of the Cr.P.C.

2. Heard Mr. Vishwasrao Deokar, learned counsel for the Appellant, Mr. Jaydeep Mane, learned counsel for the Respondent No.2 and Ms. Ranjana Humane, learned APP for the State/Respondent.

3. The prosecution case is that, the first informant-PW-8 Deepak Chavan had taken loan of Rs.50000/- from the Appellant. According to the informant, he had returned around Rs.2 lakhs, but still the Appellant was demanding the principal amount of Rs.50000/- and was causing harassment to the informant.

4. On 03.12.2016, the Appellant called the informant to a secluded spot on the pretext of arranging for loan from a bank, so that the informant could return the appellant's amount. When both

of them reached the spot, the Appellant assaulted the informant with a knife all over his body causing serious injuries. The Appellant ran away. The informant sought help of some people who were in the vicinity. They took him to a police chowky. After that the police sent him to hospital with *police yadi*. The informant lost his consciousness because of the injuries. When he regained consciousness on 05.12.2016, he gave his statement to the police; resulting in registration of C.R.No.555 of 2016 at Vijapur Naka police station at 11:50p.m. The investigation was carried out. The appellant was arrested on 08.12.2016. At his instance, a knife was recovered from a different spot. It was concealed under a heap of stones. The Appellant's clothes were recovered at his instance from his house. The statements of the witnesses were recorded. The seized articles were sent for C.A. examination. At the conclusion of the investigation, the charge-sheet was filed and the case was committed before the court of Sessions.

5. During the trial, the prosecution examined 12 witnesses including the first informant, the panchas, the informant's wife, the Medical Officer, the police officers and the Investigating

officers. The defence of the Appellant was of total denial. According to him, since he had refused to give money to the informant, he was falsely implicated. He further added that the injured was working on a temporary job. He demanded money from others. The informant was addicted to liquor. As the appellant's father refused to give money to the informant, he lodged a false complaint against the appellant.

6. The learned Trial Judge considered the evidence, the defence and the arguments. He convicted and sentenced the Appellant, as mentioned earlier.

7. The injured Deepak Chavan was examined as PW-8. He has stated that, in the past, he was working as Conductor in the City bus. The Appellant's father was working with him. Therefore, he became acquainted with the appellant. He had taken Rs.50000/- as a hand-loan from the appellant, on interest. He paid Rs.2 lakhs in that connection, but even then, the appellant was asking him to pay the principal amount of Rs.50000/-.

8. On 03.12.2016, the Appellant made a phone call and told PW-8 Deepak to come near a temple at Vijapur Naka along

with the documents. He told PW-8 that he would give him loan from a bank for Rs.5 lakh. He further told PW-8 that the Bank Manager's house was in that area. PW-8 went to that spot at about 7:00p.m. The Appellant came there. They started walking towards Ramling Nagar. They reached a school. It was around 8:30p.m. The Appellant made a phone call to Manager. PW-8 had brought Rs.10000/-, his passbooks, cheque book and Aadhaar Card. The Appellant pointed somewhere saying that the Manager was coming there. In the meantime, the Appellant started assaulting him on his back, hand and stomach. After the assault, he ran away. PW-8 came on the road by walking. The people around that area took him to Vijapur Naka police station. The police took him to Civil Hospital. PW-8 had become unconscious. He regained his consciousness on 05.12.2016 and then he lodged his F.I.R. The F.I.R. is produced on record at Exhibit-29. The witness further deposed that, he identified the Appellant in the test identification parade. He identified the weapon knife produced in the Court. His own clothes were seized by the police. He identified them in the Court.

In the cross-examination, he deposed that, he knew the appellant's father since 1992 and from then onwards he was acquainted with the appellant. He had no documentary evidence to show that he had taken loan of Rs.50000/- from the appellant. He had not made any complaint about the appellant demanding Rs.50000/-, though, he had repaid more than that i.e. Rs.2 lakhs. He had taken that amount for his business. He had not made entry in any notebook. There were financial transactions between him and the appellant since 8 to 9 years. Except this dispute of Rs.50000/- there was no other dispute between them. They were discussing this for about a month. He denied the suggestion that there was no light near the spot. After the assault he had fallen down. Then he came on the road which was at the distance of 10 minutes walk. He did not know the persons who brought him to the police station. When he reached Vijapur naka police station, the police asked him about the incident and he informed them about the incident. The police took him to the hospital in their van. At that time, he was unconscious. His wife and son reached the hospital at around 9:00p.m. to 9:15p.m. after the police had

informed them. He denied the suggestion that, after deliberation for about 3 to 5 days, he lodged the F.I.R. He denied the suggestion that unknown persons assaulted him and took away the amount of Rs.10000/-, the passbook and other documents which he was carrying. The test identification parade was conducted in the presence of the Tahsildar.

9. The F.I.R. produced on record at Exhibit-29 substantially corroborates the informant's case. In that F.I.R. the appellant is mentioned as Jatti's elder son. The F.I.R. was lodged at 11:50p.m. on 05.12.2016 after the Medical Officer gave an endorsement that the informant was conscious and was in a position to give a statement.

10. Dr. Kushal Malwade was examined as PW-6. He was attached to Civil Hospital, Solapur as a Casualty Medical Officer since 13.10.2021. Dr. Avinash Gaikwad who had examined PW-8 in this case was not working in their hospital at the time of PW-6's deposition. His whereabouts were not known. Therefore, PW-6 Dr. Kushal deposed on the basis of the record available with their

hospital in respect of the MLC No.22873. He deposed that the patient named Deepak Chavan was examined on 03.12.2016 at 9:15p.m. by Dr. Avinash Gaikwad. He was brought with police yadi at around 8:45p.m. He had sustained 10 injuries as follows:

- I. Stab injury on right side of neck of size 5cm x 2cm x 1cm.
- II. Stab injury on left sub areolar region of size 2cm x 2cm x 2cm.
- III. Stab injury on above umbilicus of size 4cm x 2cm x 2cm.
- IV. Stab injury on left hypo chondrium of size 2cm x 1cm x 2cm.
- V. Stab injury on left lumbar of size 2cm x 2cm x 2cm.
- VI. Stab injury on left iliac fossa of size 2cm x 2cm x 1cm.
- VII. Stab injury on left axilla of size 2cm x 1cm x 2cm.
- VIII. Stab injury on left scapular region of size 2cm x 1cm x 2cm.
- IX. Stab injury on right lumbar back region of size 2cm x 1cm x 2cm.
- X. Stab injury on left scapular region of size 2cm x 2cm x 1cm.

These injuries were caused by a sharp weapon within 24 hours of the examination. The injury Nos.2 to 7 were grievous.

He added that, all the injuries were dangerous to life.

The C.T. scan of thorax revealed the following injuries:

I. Lungs –

- i. ground glass area are noted in apico posterior segment of left upper lobe suggestive of pulmonary contusion / hemorrhage (considering history of trauma) -
- ii. Ground glass areas also noted in basal segment of left lower lobe and right lower lobe.

II. Pleura -

- i. Hyperdense collection with maximum depth of 1.3cm. is noted in left pleural space suggestive of heamothorax.
- ii. Air attenuation seen in left pleural space suggestive of pneumothorax.

III. Soft Tissue -

- i. Surgical emphysema noted over bilateral chest wall, lower neck and left paraspinal region.

The C.T. scan of abdomen revealed the following injuries:

- I. Air pocket are noted under parietal peritonium suggestive of pneumoperitonium.
- II. Extensive air is seen in inter muscular plane alongwith left lateral abdominal wall.

III. Herniation omentum is seen through the umbilicus suggestive of umbilicus hernia.

PW-8 Deepak was admitted and had undergone exploratory laprotomy. He was discharged on 13.12.2016. The medical certificate has signature of Dr. Avinash Gaikwad. It is produced on record at Exhibit-34.

In the cross-examination, PW-6 has stated that the patient was conscious and oriented when he was brought to the hospital. At that time, he had not stated the name of the person who had assaulted him. He stated that, some of the injuries were similar and the others were different. There was no mention, as to whether the injury was clean cut or it was irregular injury, in the certificate.

11. PW-1 Chandrashekhar Shivsharan was a pancha in whose presence the clothes of the injured Deepak were seized. That panchanama is produced on record at Exhibit-14. He was also a pancha for the spot panchanama. Three photographs of the spot were produced on record at Article C, C-1 and C-2.

In the cross-examination, he deposed that the clothes were kept in a carry bag. He and the other pancha had reached the police station. He admitted that, he had not read the contents of the panchanama.

12. PW-2 Ramsing Pawar was a pancha who was present when the clothes and knife was recovered at the instance of the Appellant. The panchanama for seizure of the Appellant's clothes was produced on record at Exhibit-16 and memorandum panchanama and recovery of knife panchanama is produced on record at Exhibit-17. The clothes were produced by the Appellant from his house and knife was recovered from a place near a school. It was concealed under a heap of stones. Those two panchanamas are produced on record at Exhibit-16 and 17 respectively.

In the cross-examination, he admitted that the spot from where the knife was recovered was open and was accessible to all. However, he added that, it was kept under the stones. In the memorandum statement, the Appellant had not stated as to at

what place the knife was concealed by him. The C.A. reports produced by the prosecution through the evidence of the investigating officer at Exhibit-45, 46 and 47 show that there was blood of the blood group 'B' on the knife and on the clothes of the injured Deepak. The prosecution had not taken care to lead proper evidence in respect of seizure of clothes of the informant. Linking evidence to show as to how the clothes were collected from the hospital, who had collected them and who had brought them to the police station is missing. The panchas had merely signed that panchanama. The clothes of the injured were already kept in a carry bag when the panchas had gone to the police station. Similarly, the knife was produced from an open space which was accessible to all. It is not explained as to the nature of heap of stones under which it was kept and whether it could be within the Appellant's exclusive knowledge. Therefore, reasonable doubt is created regarding the case of the prosecution that blood of the injured was found on the knife recovered at the instance of the Appellant. Therefore, to that extent, I am excluding this circumstance from further discussion.

13. PW-3 Savita Chavan was the wife of injured Deepak Chavan. Her evidence is only to the extend that when she went to the civil hospital, Deepak was not in a position to speak. He regained his consciousness on 05.12.2016 and then he had told her that Jatti's son had assaulted him. Then, he had lodged the F.I.R.

In the cross-examination, she admitted that, her husband was suspended on two occasions in the past because of his addiction to liquor or embezzlement of money.

14. PW-4 Abhijeet Umbare and PW-5 Sagar Sangave had taken Deepak to Vijapur naka police chowky. Their evidence is similar. Both of them had seen the injured Deepak. He was not in a position to sit on the motorcycle. Therefore, he was brought to the police chowky on Umbare's vehicle.

In the cross-examination of PW-4 Umbare, he deposed that, Deepak had told them that Jatti's elder son had assaulted him with knife. PW-5 Sagar has also stated that Deepak had told him that Jatti's son had caused injuries by means of knife.

15. PW-7 police constable Chetan Pawar had carried the articles to FSL. As discussed earlier I am not giving much importance to this recovery and consequent C.A. reports.

16. PW-9 PHC Amit Pawar had produced the logbook when the police had gone to the spot on 13.12.2016. The logbook is produced on record at Exhibit-31.

17. PW-10 PHC Mukund Chavan had given *yadi* to the injured Deepak and had recorded his F.I.R. on 05.12.2016.

18. PW-11 API Swapnali Devkate was the first investigating officer. She had recorded the supplementary statement of Deepak.

In her cross-examination, she deposed that when the injured was brought to the police station, she herself was present. At that time, Deepak had informed about the incident to the concerned police, however, she did not inquire whether any entry was made in the station diary regarding the same. She had conducted the investigation upto 08.12.2016.

19. PW-12 API Ravindra Sangale was the I.O. who had

conducted the investigation from 08.12.2016 onwards. He has deposed about the recovery of the clothes of the appellant, recovery of the knife and conducting the spot panchanama. He has produced the C.A. reports on record.

In the cross-examination, he deposed that, he had not taken any action against the police officer who had not made any entry in the station diary. He deposed that the spot of incident was a secluded place and in that area the incidents of theft and robbery had taken place.

20. Learned counsel for the Appellant made the following submissions.

There was no evidence of loan transaction. The F.I.R. mentions that three persons were coming towards them but there is no investigation in that behalf. The statements of those three persons were not recorded. Even their identity is not established. The documents and the money which the informant had carried was not referred to anywhere subsequently in the investigation. They were not recovered. The informant was in service. He was

not conducting any business, therefore, there was no question of the informant asking for any loan from the Appellant. There was no prior complaint of harassment made by the injured Deepak to any one. He submitted that, therefore, this is a false case.

21. Learned APP submitted that the Appellant had motive to assault the informant. There is direct evidence of PW-8 Deepak regarding the incident. There is no reason to doubt his deposition. The nature of injuries shows that it was a serious incident and the offence U/s.307 of the I.P.C. is made out. According to her, the prosecution has proved its case beyond reasonable doubt.

22. Learned counsel appearing for the first informant submitted that the ocular evidence of PW-8 Deepak is corroborated by the medical evidence and, therefore, the conviction be upheld.

23. I have considered these submissions. In this case, there is a direct evidence of PW-8 Deepak. He had described the incident in detail. He was knowing the Appellant since 1992 as the Appellant's father was his colleague. There is no scope for arguing or holding that assault was committed by an unknown person. Significantly,

the Appellant himself in the answers given in the statement U/s.313 of the Cr.p.c. has admitted that the Appellant was implicated falsely because he refused to give the money to Deepak. All this shows that the Appellant was known to the informant Deepak and therefore, it was not a case of assault by an unknown person. According to Deepak, in the F.I.R. he has mentioned that Jatti's elder son had assaulted him. His version is supported by PW-4 and PW-5 who had taken him to the police chowky. Thus, immediately, at the first instance, the informant had disclosed about the assault caused by the Appellant to these independent witnesses. Therefore, there was no deliberation or afterthought on his part to implicate the appellant falsely. In this view of the matter, the police officer not taking down this information in writing immediately when he was taken to the police station on 03.12.2016 will not matter because the priority was to take him to the hospital to save his life. The record shows that till 05.12.2016 he was not in a position to give any statement and, therefore, as soon as he regained his consciousness, his statement was recorded, in which, he had stated that Jatti's elder son had assaulted him.

Therefore, the identity and role of the present Appellant is sufficiently established, as soon as, it was possible for the police to record Deepak's statement. Since the identity of the appellant was not in dispute, there was no necessity to conduct the test identification parade. There is no substance in the submissions that identity of three unknown persons was important as, according to the version given by Deepak in the F.I.R., three persons were approaching him at that spot when he had gone there with the Appellant. It is important to note that, in the substantive deposition before the Court the informant PW-8 had not mentioned anything about those three persons. In any case, even in the F.I.R., his case was that when those three persons were approaching him, the Appellant immediately started assaulting him all over his body. Therefore, this particular aspect will not help the appellant. The deposition of PW-8 Deepak is clear and he has described the incident in detail.

24. The medical evidence shows that the informant had suffered 10 injuries, out of which, injuries Nos.2 to 7 referred to herein above were described as grievous injuries. Apart from that,

the injury on the right side of his neck of the size 5cm x 2cm x 1cm was on the vital part i.e. neck. The internal damage was mentioned by PW-6 Dr. Kushal. This injury shows that, there was clear attempt to commit murder of the injured Deepak. Though, the Doctor, who had actually conducted the examination, was not available, this evidence is given on the basis of the record available with the hospital. It was maintained in regular course of business. This evidence is admissible and the prosecution has proved that the injured Deepak had suffered those injuries which were life threatening injuries.

25. Thus, in this case, the evidence of PW-8 Deepak is cogent, clear and wholly reliable. Just because in the past he was suspended on the charges of addiction of liquor or embezzlement of money does not mean that the incident is not true or that he has implicated the Appellant falsely.

26. PW-8 Deepak's evidence is sufficiently corroborated by the medical evidence. These are the strong pieces of evidence against the Appellant. The prosecution, therefore, has proved its

case beyond reasonable doubt. The learned trial Judge has given sufficient reasons for imposing the sentence of seven years. Looking at the nature of the injuries which are described herein above, I do not see any reason to take a different view to show leniency in reducing the sentence imposed on the Appellant. With the result, I do not find any reason to interfere with the impugned Judgment and order.

27. Consequently, the Appeal is dismissed. With disposal of the Appeal, the interim application is also disposed of.

(SARANG V. KOTWAL, J.)