

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

CRIMINAL APPEAL NO. 92 OF 2020

Mohammad Latif Sayyed	..Appellant
Versus	
The State of Maharashtra & Anr.	..Respondents

**WITH
INTERIM APPLICATION NO. 4874 OF 2024
IN
CRIMINAL APPEAL NO. 92 OF 2020**

Mr. Aniket Vagal a/w. Juhi Kadu and Savvy Kolhekar for Appellant.
Mr. Pankaj P. Devkar, APP for State/Respondent.
Ms. Jahnavi S. Karnik for the Respondent No.2.

**CORAM : SARANG V. KOTWAL, J.
DATE : 29 JULY 2025**

JUDGMENT: (PER SARANG V. KOTWAL, J.)

1. The Appellant has challenged the Judgment and order dated 25.01.2019 passed by the learned Additional Sessions Judge, Thane, in Sessions Case No.68 of 2016. There were two accused. The Accused No.1 was the Appellant's father who was acquitted from all the charges. The Appellant-Accused No.2 was convicted for commission of the offence punishable U/s.307 of the I.P.C. He was sentenced to suffer R.I. for ten years and to pay a fine

of Rs.1 lakh and in default to suffer S.I. for six months. Out of the fine amount of Rs.1 lakh, Rs.75000/- were directed to be paid to the injured witness as compensation U/s.357(1) of the Cr.P.C. on realization of the fine amount. The Appellant was acquitted from the charges of commission of the offences punishable U/s.504 of the I.P.C. and U/s.37(1)135 of the Maharashtra Police Act. He was given set off U/s.428 of the Cr.P.C.

2. Heard Mr. Aniket Vagal, learned counsel for the Appellant, Mr. Pankaj Devkar, learned APP for the State and Ms. Jahnavi Karnik, learned counsel for the Respondent No.2.

3. Learned counsel for the Appellant submitted that the Appellant was arrested on 06.09.2015. He was released on bail on 19.01.2016. After his conviction on 25.01.2019 till today he is in custody. Thus, as of today, he has completed more than six years and ten months of actual imprisonment.

4. The prosecution case is that, on 05.09.2015, there was some quarrel between one Satish and one Vannu Kannada on one side and the Appellant, his younger brother Wasim who was below

18 years of age at that time, on the other. Wasim had abused Satish and Vannu Kannada. On the next day i.e. on 06.09.2015 there was festival of *dahi handi*. At around 3:30p.m. there was a quarrel between the Appellant, his younger brother Wasim and his father on one side and Satish and Vannu Kannada on the other. The Appellant gave blows with a knife on Satish. The blows were given on the chest, abdomen and on one side. Vannu Kannada was assaulted by an iron rod by Wasim. The Appellant's father-accused No.1 was instigating him. Satish had suffered serious injuries. He was taken to the hospital. He was then shifted to KEM Hospital, Mumbai. The police recorded the statement of PW-1 Vannu Kannada and treated it as an F.I.R.

5. The offence was registered at Mumbra police station vide the C.R.No.742 of 2015. The investigation commenced, the spot panchanama was conducted. The Appellant was arrested in the night, his clothes were seized, the clothes of the injured were also seized. The weapons were recovered from the Appellant's house at his instance. The seized articles were sent for chemical analysis. The statements of the witnesses were recorded and at the

conclusion of the investigation, the charge-sheet was filed. The case was committed to the Court of Session.

6. During the trial, the prosecution examined seven witnesses including the two injured witnesses, one eye witness, a pancha for the spot panchanama, the Medical Officer who had treated the injured Satish and two Investigating officers. The defence of the Appellant was of total denial.

7. The learned Judge relied on the evidence of the injured victims, the eye witness and the recovery evidence. He considered it in the background of medical evidence and reached at the conclusion of guilt of the Appellant. He acquitted the Appellant's father for want of evidence.

8. The injured Satish Bhadoriya is an important witness in this case. He was examined as PW-2. He deposed that on 05.09.2015 at around 7:00p.m. he along with his friends Vannu Kannada and others were present near the bypass road of Siddharthnagar. At that time, the Appellant's younger brother Wasim came there with a woman. PW-2 and his friends objected.

They scolded Wasim for bringing a woman at a secluded place. At that time, Wasim quarrelled with them. On the next day i.e. on 06.09.2015 there was *dahi handi* festival. PW-2 and his friend Vannu had gone to watch *dahi handi* on the ground near Siddharthnagar. At 3:30p.m. the Appellant and his younger brother Wasim came there and started abusing PW-2 and others. When PW-2 questioned them, the Appellant stabbed PW-2 on his stomach with a knife. The Appellant's father i.e. Accused No.1 Latif was present there. Both these accused and Wasim assaulted PW-2 with kicks and fist blows. Wasim gave a blow with an iron rod on his head. Because of the stab injury on his stomach, PW-2's intestine had protruded. He became unconscious. His friend and two-three other persons took him to a hospital at Kalwa. Then he was shifted to KEM Hospital, Mumbai. He was unconscious for about two to three days. After he regained consciousness, the police recorded his statement. He underwent a surgery in the hospital. He identified his clothes, knife and the iron rod shown to him in the Court. He was admitted in the hospital for about ten to twelve days.

In the cross-examination, he stated that, Vannu was his close friend. He denied the suggestion that Vannu and PW-2 had quarreled with each other and in that fight Vannu had stabbed him in the stomach and that PW-2 had given a blow of an iron rod on Vannu's head. He denied the suggestion that on 05.09.2015 they had forcibly taken the contribution money from the Appellant for *dahi handi* festival and at that time the Appellant had gone to Mumbra police station for lodging a complaint against them. He denied the suggestion that because of this reason he had implicated the Appellant falsely in this case.

9. PW-1 Vannu Kannada was another injured in this case, but his medical certificate is not produced on record. He was examined as PW-1. He described the incident dated 05.09.2015 as was stated by PW-2-Satish. The main incident dated 06.09.2015 was deposed by him in exactly the same manner as was deposed by PW-2 Satish. He deposed that the Appellant stabbed PW-2 Satish on his stomach with a knife. He gave two to three blows. Wasim assaulted PW-1 with an iron rod on his head. The Accused No.1 Latif gave fist and kicks blows to PW-1. After that the accused

ran away from the spot. Both the injured were taken to a hospital at Kalwa. PW-1 has further stated that, he received the treatment in that hospital, but Satish was seriously injured and, therefore, he was taken to KEM Hospital, Mumbai. PW-1's statement was recorded by the police in the hospital itself. It was treated as an F.I.R. It is produced on record at Exhibit-6. The F.I.R. substantially corroborates his evidence. After registration of the F.I.R., the police went to the spot of the incident. PW-1 showed the spot of the incident. The police collected the blood mixed soil and the other soil from the spot. He identified the knife and the iron rod produced in the court.

In the cross-examination, he had also denied the suggestion that they had collected the contribution from the Appellant forcibly. He denied the suggestion that, he himself stabbed PW-2 Satish on his stomach and that Satish had assaulted him on his head with an iron rod. He denied the suggestion that, out of the fear that the accused may lodge a complaint against them, they instead, had lodged the complaint against the Appellant and other accused.

10. PW-5 Niranjan Kasare was an eye witness. He was present with PW-1 Vannu and PW-2 Satish at the time of quarrel in the evening on 05.09.2015 and also on the next day when the incident of assault took place. He has substantially corroborated the evidence of PW-1 Vannu and PW-2 Satish. Significantly, according to him, on 05.09.2015 when the quarrel took place, the Appellant had also come there. At that time, the Appellant and Wasim both had abused and threatened PW-1 Vannu, PW-2 Satish and PW-5. He has described the main incident dated 06.09.2015. He has also attributed the same role of assault with a knife, on PW-2 Satish, to the Appellant. According to him, Wasim had assaulted him with an iron rod. After that the accused ran away from the spot. PW-2 Satish sustained stab injury on his stomach and his intestine had protruded. PW-1 Vannu had sustained head injury. PW-5 and others took them to a hospital at Kalwa in an auto rickshaw. His statement was recorded after 8 to 10 days. He identified the weapons produced in the Court.

In the cross-examination, he admitted that, he had not approached the police station immediately after the incident.

11. PW-3 Nitesh Adhangale is a pancha for the spot panchanama. The spot panchanama is produced on record at Exhibit-14. It was conducted between 9:10p.m. to 10:30p.m. on 06.09.2015. The blood stained earth and other part of the earth was collected from the spot of the incident. He was also a pancha for the seizure of clothes of PW-2 Satish. This panchanama was conducted between 10:25p.m. to 11:05p.m. That panchanama is produced on record at Exhibit-15. There is hardly any dispute regarding the spot of incident and the seizure of clothes of the injured PW-2 Satish.

12. PW-4 Dr. Kalpesh Choudhari is an important witness. He has described the injuries suffered by PW-2 Satish. He stated that on 06.09.2015 he was doing his post graduation in KEM Hospital. He was on emergency duty. On that day, PW-2 Satish was brought to the hospital by the police with the history of assault by a sharp knife. He found the following injuries:

- i) Stab injury over chest 8th intercostal space (ICS) measuring 6cm x 5cm.
- ii) Stab injury above the umbilicus measuring 1cm x 0.5cm.

- iii) Stab injury in above iliac crest measuring 1cm x 0.5cm.

According to him, all the injuries were caused by a sharp weapon. They were fresh and grievous in nature. He added that, in case of non intervention and absence of medical treatment, the patient could have died. All the injuries were possible by the knife produced in the Court. He had issued the medical certificate at Exhibit-19.

In the cross-examination, he accepted that the medical certificate at Exhibit-19 did not mention the names of the assailants; even the time of assault was not mentioned. He admitted that during investigation the police had not shown him the weapon. He admitted that, these injuries were possible by any sharp weapon like 'glass'. But he denied the suggestion that the injuries could be possible because of pointed stones. He also denied the suggestion that the injuries could have been self inflicted.

13. PW-6 P.I. Dushyant Chavan had carried out a major part of the investigation in respect of C.R.No.742 of 2015 registered at

Mumbra police station. By that time, the spot panchanama and the arrest panchanama of the Appellant was already conducted. On 09.09.2015, the Appellant made a statement leading to the recovery of the weapons, iron bar and the knife from his house. That panchanama is produced on record by this witness at Exhibit-23. He had sent the articles for chemical analysis. He had collected the medical certificate of the injured. He had recorded the statements of the witnesses and then he had filed the charge-sheet against the Appellant.

In the cross-examination, he admitted that he had not obtained the CCTV footage from the spot.

14. PW-7 PSI Vishwas Pawar was the first investigating officer. He had lodged the F.I.R., had carried out the spot panchanama and had arrested both the accused. The arrest panchanama is produced on record at Exhibit-29. The Appellant was arrested on 06.09.2015 at about 8:35p.m.

Apart from this ocular evidence, the prosecution has produced the C.A. certificates at Exhibit-10. The C.A. certificates

show that there was blood of 'O' group on the Appellant's shirt. The blood on the clothes of the injured was also of 'O' group. The blood group of the injured Satish was 'O' group as is reflected in the C.A. report at Exhibit-49 produced by the prosecution.

This, in short, is the evidence led by the prosecution.

15. Learned counsel for the Appellant submitted that the ingredients of Section 307 of the I.P.C. are not made out. There was neither intention nor attempt to commit murder, nor preparation to commit murder. The incident had occurred on the spur of the moment. There was a quarrel. The evidence shows that, the injured had suffered injuries in that quarrel. He submitted that the defence raised by the Appellant is also probable. Because on the earlier day it is doubtful as to whether the Appellant was present when there was a quarrel between the injured witnesses on one side and the Appellant and his younger brother Wasim on the other. PW-1 Vannu and PW-2 Satish have not stated about his presence at the time of quarrel on 05.09.2015. He had no reason to commit this assault on PW-2 Satish. He submitted that the

Appellant could not be sure that PW-2 Satish would come at the spot to see the festival of *dahi handi* and, therefore, there could not be any preparation. He further submitted that the blood found on the knife was of human origin, but the blood group was mentioned as inconclusive. There was no blood detected on the iron rod. Therefore, there is no corroboration to the ocular evidence of the witnesses. Finally, he submitted that, in case the conviction U/s.307 of the I.P.C. is upheld, leniency be shown to the Appellant by reducing the substantive sentence and also by reducing the fine amount which is imposed on him. The Appellant was only 20 years of age at the time of the incident. He is in custody for about six years and eleven months. He is continuously in custody since 25.01.2019. He was not even granted bail during the spread of pandemic.

16. Learned counsel for the Respondent No.2, as well as, the learned APP opposed these submissions. According to them, the very fact that the Appellant was carrying a knife shows his clear intention. He was aware that the victims being the residents of the same locality would be present at the time of *dahi handi* festival

and, therefore, he had committed this assault with preparation and preplaning. The Appellant's younger brother Wasim had also carried an iron rod with him. Thus, the deadly weapons were carried to cause assault on the victims in this case. The incident of 06.09.2015 had a direct relation to the incident dated 05.09.2015. Therefore, all the ingredients of Section 307 of the I.P.C. are made out. The incident had not occurred on the spur of the moment during a sudden quarrel, but it was a preplanned attack. They submitted that the medical evidence in this case is clear.

17. I have considered these submissions. There is strong evidence of three witnesses i.e. PW-1 Vannu, PW-2 Satish and PW-5 Niranjan. Out of them, PW-1 Vannu and PW-2 Satish were the injured witnesses. Though, the prosecution has not produced the injury certificate of PW-1 Vannu for the reasons best known to them; the prosecution did produce the medical certificate and the medical evidence in respect of the injuries suffered by PW-2 Satish. Those injuries were quite serious. They were described as grievous injuries. They were on the vital parts i.e. on the chest and on the abdomen. PW-2 Satish has described his own injuries by stating

that his intestine had protruded. His evidence is supported by PW-1 Vannu and PW-5 Niranjana. Even the Medical Officer PW-4 Dr. Kalpesh has supported his case that all the injuries were grievous in nature. All the injuries were on the vital parts. Therefore, there was clear intention U/s.307 of the I.P.C. for attracting the offence of attempt to commit murder. The Appellant had carried a knife and his brother had carried an iron rod, therefore, there was preparation on their part. The manner of assault on the vital parts of the victim i.e. PW-2 Satish shows that the offence U/s.307 of the I.P.C. is clearly made out in this case. There is no reason to disbelieve the consistent version of PW-1 Vannu, PW-2 Satish and PW-5 Niranjana. They have corroborated each other on all material aspects. Their evidence if read separately also inspires confidence. It shows that the prosecution has proved its case beyond reasonable doubt. There are other corroborating pieces of evidence in the form of recovery of weapons. The knife showed presence of blood. Though, the blood group was inconclusive, but the weapons were recovered at the instance of the appellant from his own house. That evidence has remained unchallenged. The Appellant

was immediately arrested on the very same day. There is no dispute about the spot of the incident. Thus, the prosecution has proved its case through consistent ocular evidence, supporting medical evidence and corroborative pieces of evidence in the form of recovery of weapons and the C.A. certificates. Therefore, in this case, the prosecution has proved beyond reasonable doubt that the Appellant had committed the offence punishable U/s.307 of the I.P.C.

18. The next question is about the sentencing part. I find some substance in the submission of the learned counsel for the Appellant that, in this case, some leniency can be shown to the appellant. The Appellant is in custody since 25.01.2019. Prior to that, he was in custody from 06.09.2015 to 19.01.2016. Thus, till today, he has completed six years and eleven months of actual imprisonment. He was barely 20 years of age at the time of the incident. He was also imposed a fine of Rs.1 lakh; out of which, Rs.75000/- were directed to be paid to the injured witness i.e. PW-2 Satish. Considering that the amount of fine was Rs.1 lakh, I am not inclined to reduce that fine amount taking into account the

injuries suffered by PW-2 Satish. But at the same time, some leniency can definitely be shown by reducing the substantive sentence imposed on him. The Trial Court has imposed the sentence of R.I. for ten years. It can be reduced to a certain extent. Till today, the Appellant has not paid the fine amount. It is also necessary that the injured victim PW-2 Satish gets the compensation. Therefore, to strike a balance, I am inclined to reduce the substantive sentence from R.I. of ten years to R.I. for eight years.

19. Hence, the following order:

ORDER

- i) The Appeal is partly allowed.
- ii) The conviction U/s.307 of the I.P.C. recorded by the learned Additional Sessions Judge, Thane, in Sessions Case No.68 of 2016, vide his Judgment and order dated 25.01.2019, against the Appellant is maintained.
- iii) However, instead of R.I. for ten years the Appellant is sentenced to suffer R.I. for eight

years.

- iv) The fine amount of Rs.1 lakh and in default of payment of fine further sentence of S.I. for six months are maintained.
- v) Out of the total fine amount of Rs.1 lakh, the amount of Rs.75000/- shall be paid to the injured PW-2 Satish Bhadoriya, as compensation U/s.357(1) of the Cr.p.c., as directed by the learned Trial Judge, on realization of the fine amount.
- vi) The Appellant is entitled to set off U/s.428 of the Cr.PC.
- vii) The Appeal is disposed of in the aforesaid terms.
- viii) With disposal of the Appeal, the connected application is also disposed of.

(SARANG V. KOTWAL, J.)