

Bombay High Court

Shuddhodhan S/O Uttam Rajane vs State Of Mah. Thru P.S.O on 20 September, 2017

Bench: Swapna Joshi

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT NAGPUR, NAGPUR.

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CRIMINAL APPEAL NO. 302/2007

Shuddhodhan s/o Uttam Rajane  
Aged 24 years, occu: Labourer  
R/o Bordi, Taluka Akot  
Dist. Akola.

versus

The State of Maharashtra  
Through P.S.O. Akot  
Police Station Akot Dist.Akola.

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Shri R.R.Shrivastava, Advocate ( appointed) for the appellant  
Mr. S.B.Bissa, Additional Public Prosecutor for respondent -State  
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CORAM: MRS.SWAPNA JOSHI

DATED: 20th September, 2017 ORAL JUDGMENT:

Being aggrieved by the judgment and order dated 29.03.2007 in Sessions Trial No.22/2006 delivered by the learned Ad-hoc Additional Sessions Judge, Akot, convicting the appellant (hereinafter referred to as 'the accused') for the offence punishable under section 307 of the Indian Penal Code and sentencing him to suffer R.I. for seven years and to pay a fine of Rs.500/-, in default, to suffer R.I. for six months each, the present Appeal is filed.

2. Brief facts giving rise to the instant Appeal may be summarized as under:-

CRI.APPEAL.302.07 The injured-Pradip Gavai (PW 2) is the Resident of village Bordi and doing the business of selling eatables such as, bhelpuri, in the village, on a wheel-cart. The accused is also the resident of the same area of the village. It is the case of the prosecution that on the prior day evening, the accused came to Bhelpuri stall of PW2 and demanded him Bhelpuri, free of cost. PW2 refused to serve him Bhelpuri free of cost. In the past also, the accused had taken Bhelpuri from his stall without paying money. As a result of refusal, the accused felt insulted and he left the spot. As per the prosecution case, during the intervening night between 3/4th April,2006 when PW2 was sleeping on his wheelcart placed at a short distance away from his house at about 4.00 am the

accused approached him and gave a stab injury of knife on his abdomen. PW2-Pradip raised an alarm due to which his grandfather Sahadeo Thorat (PW5) approached that place. However the accused managed to run away. The injury received by PW2 Pradip was of such a nature that his intestine came out. His brother- Sandip (PW 1), also rushed to the spot on hearing the shouts of his brother. PW1- Sandip and PW5-Sahadeo, tied a scarf around the abdomen of PW2. It is also the case of the prosecution that PW2 tried to take out the knife from his abdomen as a result of which, his intestine (omentum ) came out of his abdomen. With the help of PW 1-Sandip and PW5-Sahadeo, PW2 was taken to the Rural Hospital, Akot. Considering the condition of PW2-Pradip, the Medical Officer referred him to Government Hospital, Akola, where he was treated.

3. At the relevant time, PSI Abdul Sadiq (PW4) was attached to Police Station, Akot. He recorded the complaint of PW1-Sandip as per his version (Exh.20) ,.

CRI.APPEAL.302.07 On the basis of it he registered the offence, PW 4 also took charge of the knife produced by PW1-Sandip, in the presence of two panchas. He recorded the seizure panchnama (Exh.28). PW 4 then recorded the spot panchnama. PW10-Sudhakar Arakhrao arrested the accused and recorded the statements of the witnesses. He collected the clothes of the injured under Panchnama (Exh.31). He also collected the blood sample of the injured person. Thereafter he sent all the seized articles to C.A. Office for its analysis. PW10 also collected the clothes of the accused and after completion of investigation PW 10 filed charge-sheet in the court learned JMFC, Akot. The case was committed to the Court of Sessions. The learned trial Judge framed the charge. On analysis of the evidence of the witnesses and after hearing both the sides he convicted the accused, as aforesaid. Hence this Appeal.

4. I have heard Shri R.R. Shrivastava, the learned Advocate (appointed) for the appellant and Mr. S.B. Bissa, the learned APP for the respondent/State. I have meticulously also gone through the record and proceedings of the case. The learned counsel for the appellant vehemently argued that the learned trial Judge has not considered the testimony of the witnesses in its right perspective and has erroneously convicted the accused. He submitted that the learned trial Judge has failed to consider that there was no light at the place of incident and still the testimony of witnesses has been believed. The learned APP, on the other hand, contended that the learned trial judge has rightly considered the evidence and convicted the accused.

5. On considering the rival contentions of the both the sides, it would be advantageous to go through the testimony of the prosecution witnesses. The CRI.APPEAL.302.07 prosecution mainly relied upon the testimony of PW2-Pradip, who is the injured witness, PW1- Sandip, who is the complainant and brother of the victim, PW5 Sahadeo Thorat, grandfather of the injured, PW9,Dr. Madhavi Joat and PW 10-PSI Sudhakar, the Investigating Officer.

6. The injured witness PW2-Pradip deposed that he is doing the business of selling food-items, such as Belpuri and for that purpose he has a cart. According to him, the incident took place on 4.4.2006. One day prior to the day of the incident, the accused came to his Bhelpuri stall and demanded Bhelpuri free of cost. Earlier also once or twice he had offered Bhelpuri to him without any charge and, therefore, on that day, he refused to do so. PW2 sent away the accused without giving him

Bhulpuri. The accused felt insulted and left that place. The said incident occurred during the evening of 3rd April, 2006. When PW2 Pradip was sleeping on his handcart which was halted in front of his house at about 4.00 am, on 4.4.2006, he realized that a knife was thrust into his abdomen therefore he woke up and saw the accused was withdrawing the knife from his abdomen. PW2 caught hold of his hand and asked the accused to rescue him. However the accused did not remove his hand from the handle of said knife. PW2 caught hold of the knife with his own hands and called his grandfather Sahadeo, for help. On hearing his loud shouts, Sahadeo came out of the house. However, in the meantime, the accused fled away. PW2 somehow was able to take out the blade of the knife from his abdomen due to which his intestine came out. His brother PW1- Sandip the wife of his brother and his sister also came to that place, they all helped in putting a handkerchief around his belly tightly and thereafter PW2 was taken to Rural CRI.APPEAL.302.07 Hospital, Akot. The Doctor from the Rural Hospital asked PW2 to lodge a complaint with the police, as it was a medico-legal case. Then the brother of the PW2 i.e PW1- Sandip and PW5 Sahadeo proceeded to the Police Station carrying the knife with them. PW 2 remained in the Rural Hospital, Akot. The police came to that place. Then PW2 was referred to Government Hospital, Akola and a surgery was performed on him in that hospital. He was hospitalized for about nine days.

7. Few discrepancies were pointed in the testimony of PW2. An improvement was pointed out that he had caught the hands of the accused. The said improvement does not go to the root of the case. A contradiction was pointed out in his statement that PW2 had stated before the police that when he opened his eyes, he saw the accused had fled away from that place. PW2 failed to state as to why the said version appears in his statement. In my opinion, the said discrepancy does not go to the root of the case as PW2 has unequivocally stated before the police as well as the court that it was the accused who had inflicted injury on his abdomen by means of a knife. It was suggested to PW2 that at the place of the incident there was darkness. However, PW 2 categorically stated that he had kept one electric bulb outside the house, with a view that the bhulpuri cart remained in the light and at the relevant time the said bulb was on. Thus, there is no substance in the contention that there was no light at the place of the incident. A case was put up by the defence that due to the strained relations between him and the accused he has falsely deposed against him. However PW2 denied the said suggestion. On careful scrutiny of the testimony of PW 2, it is found that his testimony is trustworthy and has not been shattered in the cross-

CRI.APPEAL.302.07 examination.

8. The testimony of PW 2-Pradip is well supported by the testimony of PW 1-Sandip, who is the complainant. PW1 stated that at about 4.30 am, he heard the call given by his grandfather-Sahadeo (PW5). He was saying that Shuddhodhan (accused) had stabbed PW2-Pradip with a knife and PW2 had asked him to rush. PW1 noticed that the knife was thrust in the abdomen of PW2- Pradip. He stated that PW 2-Pradip had caught hold of the accused Shuddhodhan, however when he reached the spot, the accused fled away. PW1 stated that PW2-Pradip took out the blade of the knife from his abdomen. He saw that the intestine had come out of abdomen of PW2. PW1-Sandip and PW5-Sahadeo put a towel around the injury by tightly fastening it. Thereafter they brought PW2 Pradip to the Rural Hospital, Akot. PW1 along with PW 5-Sahadeo proceeded to the Police station and PW1 lodged his complaint. He also produced the knife before the Police Officer. PW1 in

unequivocal terms stated that there was one electric bulb which was on and when he went to the spot, he saw Sahadeo PW5 standing near PW2- Pradip. According to PW 1 when he went to the spot, PW2 and PW 5 both told him about the incident. PW1 stated he saw the accused running away and it was at the distance of about 20 ft. from him. He however did not chase the accused. A case was put up to him that about 8 to 10 days prior to the incident there was dispute between accused and Pradip on the count of the dues and therefore, a false case has been foisted against the accused. PW1 denied the said suggestion. A careful scrutiny of the testimony of PW1 indicates that he is a reliable and trustworthy witness and his testimony supports the case of the victim PW 2- Pradip, CRI.APPEAL.302.07 to the effect that PW2 informed him that accused inflicted injury in his abdomen, by means of knife.

9. PW5-Sahadeo Thorat deposed that at about 4.00 am, he heard the call of Pradip to the effect that he has been assaulted with knife and requested to save him. On listening the call of Pradip he woke up. When he came out, he saw that Pradip was standing with a knife which was in his abdomen and he was holding the said knife. The intestine of PW2 came out. Thereafter PW2 was taken to Rural Hospital, Akot. According to PW5 police took charge of the knife which was produced by PW1-Sandip and police prepared panchnama (Exh.28). The testimony of PW5 indicates that he has seen PW2 in an injured condition and he was taken to the hospital. It also indicates that knife was seized from PW1 by the police.

10. The ocular testimony of PW1-Sandip and PW 2-Pradip corroborates with the medical evidence. The Medical Officer, Dr. Madhavi Joat (PW 9) has examined PW 2 on 4.4.2006 at about 5.40 am. On examination she found a stab injury on abdomen near right side near umbilicus having size 4 x 2 cm; the depth could not be measured; the omentum had come out. PW 9 issued the medical certificate (Exh.45). According to PW9 the injury can be caused by the knife which was shown to her. The testimony of PW 9 is not shattered in the cross-examination and it supports the case of the prosecution with regard to the testimony of PW 2-Pradip and PW 1-Sandip, that the injury was caused to PW2 on his abdomen.

11. According to Medical Officer Dr. Umesh Agrawal (PW11) who performed the surgery on PW2 Pradip, on 4.4.2006 he operated the patient-Pradip Gavai (PW2).

CRI.APPEAL.302.07 The said operation was performed at Government Hospital, Akola and during operation he found that there were three tears in the mesentery with mesenteric hematoma. PW 11 categorically stated that the injury was on vital organ called 'mesentery' and the said injury was a serious type of injury. PW11 stated that had the patient been not operated in time he would have died. PW 11 stated that the said injury can be caused by a sharp edged knife. The said version of PW11 makes amply clear that the injury was fatal injury and was sufficient to cause death in the ordinary course of nature. The testimony has not been shaken in the cross-examination.

12. On going through the entire prosecution case, it is amply clear that it was none else than the accused who assaulted PW2-Pradip by means of knife during the fateful intervening night of 3rd and 4th April, 2006 which was proved to be a fatal injury. PW2 had seen the accused when there was sufficient light and in view thereof there was no question of mistaken identity as such. The

accused had visited the stall of PW2 and there was a dispute between accused and PW 2 on the point that PW2 should give him bhelpuri free of cost. It appears that due to the said dispute the accused in a planned manner attacked PW 2- Pradip and assaulted him with an intention to cause murder. In my opinion, if the intention is present coupled with the overt act, in execution of such intention, then the offence u/s 307 of IPC is clearly made out. In my opinion the injured would not falsely implicate any other person than the real culprit. The learned trial Judge has rightly considered the evidence on record. Moreover, it is well settled that the nature of injury, part of the body where the injury is inflicted, the nature of weapon, all these aspects indicate only the offence u/s 307 IPC CRI.APPEAL.302.07 and nothing else.

13. In the case of Baleshwar Mahto and another vs. State of Bihar, reported in (2017) 3 SCC 152, the Hon'ble Apex Court observed that, "it is a consequence of fact that injury to the witness is an inbuilt guarantee of his presence at the scene of crime and because the injured witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of offence. Thus, the deposition of injured witness should be relied upon unless there are strong grounds for rejection of his evidence on basis of major contradictions and discrepancies therein."

14. The learned trial Judge has properly appreciated the evidence on record and has rightly convicted the accused. Hence no interference is called for in the judgment and order passed by the learned trial Judge. Hence the following order :-

#### ORDER

i) Criminal Appeal No.302/2007 is dismissed.

ii) The judgment and order dated 29.03.2007 in Sessions Trial No.22/2006 delivered by the learned Ad-hoc Additional Sessions Judge, Akot, convicting the appellant for the offence punishable under section 307 of the Indian Penal Code and sentencing him to suffer R.I. for seven years and to pay a fine of Rs.500/-, in default, to suffer R.I. for six months, is maintained.

iii) The appellant shall surrender to his bail bond to undergo the remaining sentence, within a period of four weeks.

iv) Professional fees of Mr.R.R.Shrivastava, Advocate ( appointed) for appellant are CRI.APPEAL.302.07 quantified at Rs.5,000/-. However, he requests that the fees be given to the District Bar Association, Nagpur. Request accepted. The professional fees be remitted to District Bar Association, Nagpur.

JUDGE sahare