

---

**(2018) 01 BOM CK 0181**  
**In the Bombay High Court**  
**Case No : 508 of 2004**

Arun s/o Namdeorao Meshram

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

---

**Date of Decision :** 30-01-2018

**Acts Referred:**

[Code of Criminal Procedure, 1973](#), [Section 428](#) - Period of detention undergone by the accused to be set off against the sentence of imprisonment

[Indian Penal Code, 1860](#), [Section 307](#) - Attempt to murder

[Evidence Act, 1872](#), [Section 27](#) - How much of information received from accused may be proved

**Citation :** (2018) 01 BOM CK 0181

**Hon'ble Judges :** Rohit B. Deo

**Bench :** Division Bench

**Advocate :** Prashant Kaole, ?Trupti Udeshi

**Final Decision :** Allowed

---

## Judgement

1. Challenge is to the judgment and order dated 22-7-2004 passed by the learned 2nd Ad hoc Additional Sessions Judge, Nagpur in Sessions Trial 325/1996, by and under which the appellant is convicted for offence punishable under 307 of the Indian Penal Code (" IPC " for short) and is sentenced to suffer rigorous imprisonment for five years and to payment of fine of Rs.1,500/-.

2. Heard Shri Prashant Kaole, learned Advocate for the appellant and Ms. Trupti Udeshi, learned Additional Public Prosecutor for the respondent/State.

3. The gist of the prosecution case, as is unfolded during the course of trial, is thus :

The incident occurred at 2-00 p.m. on 08-11-1996.

Injured Sarasram Bante was grazing his she-buffalo on the pandhan near the field of the accused. The she-buffalo strayed into the fallow land of the accused leading to an altercation. The accused whipped out a knife from the pocket of his pant and stabbed Sarasram on his left abdomen near chest and the ribs, thigh and hip causing bleeding injuries. Injured Sarasram informed Sahadeo Marbate who was also grazing cattle in the vicinity. Sahadeo Marbate in turn informed the brother of the injured one Sheshrao. Sheshrao and Fulchand came to the spot with bullock-cart, brought the injured in village Mahalgaon and from there took the injured to Government Hospital, Bhandara. Pursuant to intimation received, Assistant Sub-Inspector Madavi rushed to the hospital and recorded the statement of injured Sarasram. The statement was treated as first information report (Exhibit 24), on the basis of which Mouda police registered "0" first information report and forwarded the papers to Ramtek Police Station. Crime 335 of 1995 was registered at Ramtek Police Station. Injured was treated at Bhandara Hospital by Dr. Vijay Wasnik (P.W.12) who issued injury certificate (Exhibit 60). Investigation ensued, spot panchanama (Exhibit 26) was prepared, blood smeared soil was seized and so was the plain soil. The clothes of the injured were produced by Sheshrao. The accused was arrested on 26-11-1995 and while in custody gave statement under Section 27 of the Indian Evidence Act pursuant to which a knife, one full pant and terrycot shirt was produced by the accused from his house. Statements of witnesses were recorded, the seized articles were sent for chemical analysis and the culmination of investigation led to filing of charge-sheet before the learned Judicial Magistrate First Class, Ramtek who committed the proceedings to the

Sessions Court.

4. The learned Sessions Judge framed charge under Section 307 of the IPC, the accused abjured guilt and claimed to be tried in accordance with law. The defence is denial simplicitor although it is also suggested to the injured that the accused is falsely implicated in view of the altercation.

5. The learned Advocate Shri Prashant Kaole submits that the conviction is against the weight of evidence on record. The first information report is unduly delayed and so is the recording of statements of witnesses, is the submission. The evidence of prosecution witnesses is not credit worthy in view of the inter se inconsistencies, is the submission.

6. Per contra, Ms. Trupti Udeshi, learned Additional Public Prosecutor supports the judgment and order impugned and submits that the marshelling of evidence on record and the findings recorded do not suffer from any infirmity.

7. The only eyewitness to the incident is the injured Sarasram Bante (P.W.1). He states that he was grazing she-buffalo near his field. Between 1-00 to 1-30 p.m., the accused obstructed him from grazing she-buffalo. The accused whipped out a knife and inflicted stab injuries on the rib, thigh, chest and hip. The accused fled from the spot, P.W.1 asked Sahadeo Marbate who was standing at some distance to call his brother. P.W.1 states that thereafter he became unconscious, was taken to the hospital at Bhandara and was admitted for a month.

The evidence of P.W.1 is not shaken in the cross-examination. P.W.1 was suggested that he was asleep while the she-buffalo was grazing and was not in a position to identify the assailant, which suggestion is denied. The defence did suggest that it was not the accused who assaulted P.W.1, however, it is apparent from the trend

and tenor of the cross-examination, that the presence of the accused in the vicinity is not disputed.

8. Sahadeo Marbate, who is the informant, proves oral report (Exhibit 24). He has no personal knowledge about the assault.

However, he corroborates P.W.1 to the extent that he was told by the injured Sarasram that the accused inflicted the stab injuries.

9. P.W.3 Ganesh Bhoyar proves spot panchanama (Exhibit 26) and seizure memo (Exhibit 27). The seizure is of the sample of mud from the spot.

10. P.W.4 Surchand Bhoyar accompanied Sheshrao to the spot in bullock-cart, he was with Sheshrao when the injured Sarasram was initially brought to the village and then shifted to Bhandara Hospital.

11. P.W.5 Sabir Turak did not support the prosecution. He was examined to prove that the accused visited his pan shop with a bandage to his wrist. Nothing is elicited in his cross-examination to assist the prosecution.

12. P.W.6 Sheshrao Bante is the brother of the injured, to whom the informant conveyed that the injured Sarasram is at the pandhan. P.W.6 states that P.W.1 had bleeding injuries on stomach, he went back and narrated the incident to villagers and with the assistance of villagers the injured Sarasram was taken to the village and then to the hospital at Bhandara.

13. P.W.7 Ghanshyam Dixit, then attached to Police Station Ramtek registered the offence and proved spot panchanama (Exhibit 26) and the seizure memo (Exhibit 27). P.W.7 has proved the memorandum under Section 27 of the Indian Evidence Act and the seizure of the knife discovered at the instance of the accused.

14. P.W.8 Gulab Wadate recorded the statement of injured Sarasram and seized the clothes of the injured produced by Sheshrao.

15. P.W.9 Shalikram Mate has deposed that police seized the

clothes of the injured in his presence and that seizure memo (Exhibit 32) bears his signature.

16. P.W.10 Kheduram Marai recorded the statement of Sahadeo Marbate (Exhibit 24). He registered "0" first information report and forwarded the papers to Police Station Ramtek. He has proved "0" first information report (Exhibit 53).

17. P.W.11 Raghunath Nagpure was examined as witness to Section 27 memorandum and the discovery of knife and clothes by accused. He did not support the prosecution. Nothing is elicited in his cross-examination to assist the prosecution.

18. P.W.12 Dr. Vijay Wasnik examined injured Sarasram on 08-11-1995 and noticed three stab injuries which P.W.12 described thus:

(i) Stab injury on left hypochondrium 1" x ?" x cavity deep (below ribs to the left side of abdomen, omentum herniating (layer of fat) stomach and intestine came out i.e. protruded.

(ii) Stab wound right iliac region herniating intestine and omentum i.e. right side of lower abdomen. 1" x 1" x cavity deep.

(iii) Stab wound on left thigh Anterolateral aspect 2 inch below left anterior superior iliac spine 1" x 1/2" x muscle deep.

Injuries might have been caused by hard and sharp object. Injuries were fresh caused within six hours Injuries 1 and 2 were grievous in nature. Patient was hospitalized in the ward.

P.W.12 proves the injury certificate (Exhibit 60) P.W.12 has deposed that after examining the knife which was sent to him vide requisition (Exhibit 61), he concluded that injuries 1 to 3 can be caused by the weapon. He accordingly issued certificate (Exhibit 62) and identified the weapon in the Court to be the same weapon sent to him

for examination. P.W.12 has deposed that injuries 1 and 2 were sufficient in ordinary course to cause death if not treated properly within time.

19. Concededly, it is only the injured P.W.1 who could have deposed that he was assaulted by the accused. There is no other eyewitness to the assault. Having closely scrutinized the evidence of P.W.1, the conscious of this Court is satisfied that the testimony is implicitly reliable. Nothing is brought on record for this Court to disbelieve P.W.1. It must be borne in mind, that the testimony of an injured witness stands on a higher pedestal than that of other witnesses. Injuries lend assurance to the case of the prosecution that the witness was present at the scene of occurrence. The injured is not likely to inculcate the innocent and to exculpate the guilty. The suggestion given to P.W.1 that he was sleeping and therefore, was not in a position to identify the assault, is denied. The evidence of P.W.1 is more than amply corroborated by the evidence of P.W.2 Sahadeo, P.W.6 Sheshrao and the medical evidence on record.

20. The submission of the learned Advocate for the accused that the evidence of seizure is of no relevance since in the chemical analysis no blood was detected on the knife needs to be appreciated in the context of the irrefutable fact that the accused was arrested on 26-11-1995 and the knife was seized on 28-11-1995 i.e. about twenty days of the incident. The discovery and seizure of the knife is duly proved. The medical evidence that the injuries caused to P.W.1 are possible due to the weapon seized is a corroborative circumstance. Even if the evidence of discovery and seizure of knife is kept out of consideration, the ocular account of the assault by P.W.1 injured witness is confidence inspiring.

21. The learned Advocate Shri Prashant Kaole submitted, as an alternate submission, that even if the evidence on record is accepted,

offence punishable under Section 307 of the Indian Penal Code is not established. The submission is noted only for rejection. The fact that a double edged weapon was used to inflict injuries on vital part of the body, the severity of the blow, the fact that three stab injuries were inflicted, two of which were grievous, are circumstances suggesting that the accused did intend to cause death and at any rate did have the knowledge that by inflicting such injuries he may cause death or such bodily injury capable of causing death. The evidence of P.W.12 Dr. Vijay Wasnik shows that the injuries 1 and 2 were grievous. Not only this, Medical officer has stated that omentum was herniating i.e., layer of fats and stomach and intestine protruded from injuries as the injuries were cavity deep and according to the opinion of Medical Officer vide Exhibit 63 that these injuries are sufficient in nature of ordinary course to cause death.

22. The conviction under Section 307 of the IPC is unexceptionable. In so far as sentenced is concerned, the accused was a young man aged 23 to 24 years when the incident occurred more than twenty-one years ago. In the factual matrix, I deem it appropriate to alter the sentence to three years rigorous imprisonment while maintaining the fine.

23. With this alteration in the sentence imposed, the appeal is partly allowed.

24. The accused be taken into custody to serve the sentence.

25. He shall be entitled to set off under Section 428 of the Criminal Procedure Code.