

(1998) 02 BOM CK 0023
In the Bombay High Court
Case No : Criminal Appeal No. 7 of 1994

Ashok Kamlakar

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 26-02-1998

Acts Referred:

Bombay Police Act, 1951 — Section 135, 142, 37(1), 39, 40
Constitution of India, 1950 — Article 3
Criminal Procedure Code, 1973 (CrPC) — Section 154
Evidence Act, 1872 — Section 3, 45, 59, 8, 9
Penal Code, 1860 (IPC) — Section 307, 332

Citation : (1998) 5 BomCR 609

Hon'ble Judges : V.K. Barde, J;D.D. Sinha, J

Bench : Division Bench

Advocate : D.H. Wagh, for the Appellant; K.M. Babhulgaonker, Assistant Public Prosecutor, for the Respondent

Judgement

D. D. Sinha, J.—The present criminal appeal is preferred by the appellant against the judgment and order of conviction dated 21-12-1993, passed by the Additional Sessions Judge, Aurangabad in Sessions Case No. 150 of 1993, whereby the appellant/accused was convicted for the offence punishable u/s 307 of the Indian Penal Code, and sentenced to suffer R. I. for the period of seven years and also directed to pay a fine of Rs. 500/-, in default to suffer further R.I. for six months. The appellant is also convicted for the offence punishable u/s 332 of the Indian Penal Code and sentenced to suffer R.I. for the period of two years and to pay a fine of Rs. 300./- , in default to suffer further R.I. for three months. Similarly, the appellant is convicted for the offence punishable u/s 135 of the Bombay Police Act and sentenced to suffer R.I. for four months and to pay a fine of Rs. 100/- in default to suffer further R.I. for one month. The appellant is also convicted for the offence punishable u/s 142 of the Bombay Police Act, and sentenced to suffer R.I. for six months and to pay a fine of Rs. 200/- in default to suffer further R.I. for two months. Substantive sentences are directed to run concurrently. However, the sentences in default of payment of fine are directed to

run consecutively.

2. We feel it appropriate to consider certain relevant facts of the prosecution case which had resulted in prosecution of the present appellant/accused for the offences charged.

On 10-2-1993, Head Constable Khandagale (P.W. 1) was on duty at Police Station, Vaijapur. This witness had received an information on phone that the present appellant/accused was behaving in disorderly manner in front of the Sub-Registrar's Office, Rest House road at Vaijapur. Informant requested on phone that police staff be sent immediately. Head Constable (P.W. 1) had taken down the entry in the Station Diary and informed P.S.I. Pallewad, who was the Senior Police Sub Inspector at the relevant time. P.S.I. Pallewad (P.W. 7) along with other police staff reached to the spot and on seeing them, accused Ashok started running towards Sub-Registrar's Office. The appellant entered into the front room of Sub-Registrar's Office. P.S.I. Pallewad chased him and also entered into the front room of Sub-Registrar's Office. P.S.I. Pallewad caught hold of the accused from behind. At that time, the appellant took out a Razor from his waist with his right hand and assaulted P.S.I. Pallewad with the same, causing bleeding injury on his chest. The appellant thereafter, again raised his hand to give second blow with Razor to P.S.I. Pallewad, however, at that time, Police Constable Gaikwad (P.W. 6) caught his right hand and snatched Razor from him. The alleged incident in question occurred at about 1.30 p.m. P.S.I. Pallewad (P.W. 7) thereafter was taken to the Government Hospital, Vaijapur and on his directions Police Constable Gaikwad and others took the appellant to the Police Station, Vaijapur. Head Constable Khandagale (P.W.1) seized the Razor (Art. No. 3) in the presence of panchas on production of the same by Police Constable Gaikwad at the police station. P.S.I. Pallewad was examined by Dr. Fadnis (P.W. 4), who had given the injury certificate in respect of the injuries sustained by the P.S.I. Pallewad, which is exhibited as Exh. 17. P.S.I. Pallewad thereafter lodged his complaint (Ex. 22), and the crime was registered against the appellant/accused.

3. P.S.I. Ghule (P.W.8) thereafter took over the investigation in the instant case. He went to the spot and made a spot panchanama Exh. 30 and also seized the button (Art. No. 1) and the name plate of P.S.I. Pallewad in the presence of panchas vide Panchanama Ex. 30. P.S.I. Ghule thereafter also seized Shirt (Art. No. 4) and banian (Article No. 5) which was on the person of P.S.I. Pallewad at the time of the incident. P.S.I. Ghule arrested the appellant in the presence of panchas and as there were some injuries on the person of the accused, he was sent to the hospital where he was examined by Dr. Fadnis, who gave his report in respect of the injuries sustained by the accused. During the course of investigation, the full pant of the accused having some blood stains was also seized. The clothes of P.S.I. Pallewad, which were seized during the course of investigation, full pant of the accused and Razor (Art. 3) were sent to the Chemical Analyser, who had issued the report in respect of the analysis conducted by him.

4. On 12-2-1993, the appellant was again sent to the hospital for examination and was examined by Dr. Khillare (P.W. 12), who had issued report in respect of the same, which is Exh. 40. It is the case of the prosecution that at the time of the incident of assault, Yasinkhan (P.W. 3) and Baburao (P.W. 4) were also present on the spot i.e. in the Sub-Registrar's Office and have witnessed the incident in question. The map of the spot of incident (Ex. 34) was drawn by Revenue Inspector Kulkarni (P.W.9). Investigation in the instant case thereafter was taken over by P.S.I. Patil due to transfer of P.S.I. Ghule.

5. It is the case of the prosecution that the Sub-Divisional Magistrate, Vaijapur vide order dated 16-9-1991 had externed the appellant from the districts of Aurangabad, Ahmednagar and Nashik for a period of two years and on the date of the incident, the accused had entered the Municipal limits of city of Vaijapur in Aurangabad District in breach of the said externment order. It is also the case of the prosecution that the order of the District Magistrate, Aurangabad under sections 37(1) and 37(3) of the Bombay Police Act, restraining persons from possessing any weapon, sword, gun, etc. was also in force for a period from 1-2-1993 to 15-2-1993. In spite of the said order, the appellant was seen on 7-2-1993 as well as on the date of the incident with Razor and, therefore, he had violated the said order. After completion of the investigation, P.S.I. Patil filed the charge-sheet for the offences punishable under sections 307, 332 of the Indian Penal Code and u/s 135 and 142 of the Bombay Police Act against the appellant in the Court of the Judicial Magistrate, First Class, Vaijapur. The offence punishable u/s 307 of the I.P.C., being exclusively triable by the Court of Session, the learned Magistrate committed the case to the Sessions Court, Aurangabad. Charge (Exh. 3) came to be framed against the appellant and was explained to the accused, to which he pleaded not guilty and claimed to be tried. The defence of the accused is that of total denial.

6. During the course of the trial, the prosecution has examined in all 12 prosecution witnesses and also relied upon various documents proved by the prosecution witnesses. The trial Judge accepted and believed the evidence adduced by the prosecution and convicted the appellant for the offences charged, as referred above.

7. The learned Counsel for the appellant/accused contended that the appreciation of the evidence done and the findings arrived at by the trial Judge are not just and proper and same are also not sustainable in law. The learned Counsel contended that the evidence of the complainant i.e. P.W. 7 Palleshwar is not truthful and same ought not to have been accepted by the Court below. The learned Counsel further submitted that the complainant being a Police Officer was very much interested in the prosecution of the appellant and, therefore, falsely implicated the appellant in the crime in question. According to the learned Counsel, in the instant case, the prosecution has examined P.W. 3 Yasinkhan, P.W. 5 Baburao and P.W. 6 Pramod as eye-witnesses to the incident in question. However, according to him, P.W. 3 Yasinkhan was a person, who was closely

associated with the Police Department and was also examined as panch witness in many criminal cases. The contention of the learned Counsel, therefore is, this witness is a interested witness and his testimony ought not to have been accepted by the Court below. It is the contention of the learned Counsel that evidence of P.W. 5 Baburao and P.W. 6 Pramod is inconsistent with the evidence of the complainant P.W. 7 Pallewad and therefore it should have been rejected by the Court below. The learned Counsel contended that in the instant case the trial Court has considered Exh. 22 i.e. the report lodged by P.W. 7 Pallewad as F.I.R. However, the investigation was set in motion vide Exh. 7, the entry of which had been taken by P.W. 1 Khandagale in the Station Diary. The learned Counsel therefore contended that in the instant case Exh. 22 cannot be said to be the F.I.R, since the trial Court has wrongly accepted Exh. 22 as F.I.R. in the instant case as contemplated u/s 154 of the Cr. P.C., the entire trial had been adversely affected. The learned Counsel further contended that the prosecution has not proved the essential ingredients for the offence punishable u/s 307 of the I.P.C. The learned Counsel submitted that in the instant case it cannot be inferred that at the relevant time, the appellant entertained intention to commit murder of P.W. 7 Pallewad nor the injuries caused by the appellant can be said to be dangerous to the life of P.W. 7. It is therefore contended that the prosecution failed to prove the essential ingredients of section 307 of the I.P.C. and on this count also, the judgment of the trial Court is not sustainable in law. In order to substantiate the above referred contention, the reliance was placed on the judgment of this Court reported in 1991 (1) M.L.R.702, Dayaram v. State of Maharashtra. The Counsel for the appellant further contended that the conviction awarded by the trial Court for the offence punishable u/s 332 of the I.P.C., 135 and 142 of the Bombay Police Act is also bad in law and is not sustainable in law.

8. The learned A.P.P., on the other hand supported the judgment and order of conviction passed by the trial Court.

9. In order to appreciate the contentions raised by the learned Counsel for the appellant as well as the learned A.P.P., it will be appropriate for us to consider and scrutinize the evidence adduced by the prosecution. In the instant case the prosecution has examined in all 12 prosecution witnesses for the purposes of unfolding the case of the prosecution as well as proving the offences charged against the appellant-accused. However, the material evidence is of P.W. 1 Khandagale, P.W. 3 Yasinkhan, P.W. 5 Baburao, P.W. 6 Pramod, P.W. 7 P.S.I. Pallewad and P.W. 4 Dr. Ganesh.

10. In the instant case P.W. 7 P.S.I. Pallewad is the victim of assault and, therefore, it will be appropriate for us to scrutinize his evidence before we consider the evidence of the other witnesses. P.S.I. Pallewad has deposed in his examination-in-chief that at the relevant time he was in-charge of Police Station, Vaijapur. The incident took place on 10-2-1993. On that day he was on duty. He was in the Police Station till 11.30 a.m. and thereafter he was on patrolling duty in the city along with staff and returned to the Police Station at about 1.00. p.m.

At about 1.20 p.m. Police Head Constable Khandagale received a phone call from some unknown person who had informed him that externee Ashok Kamlakar Pawar (appellant) had come in the city and was behaving in disorderly manner in front of Sub-Registrar's Office, Vaijapur and, therefore, the police staff should be sent on the spot immediately. On receipt of the said information, this witness along with the other staff rushed towards the Sub-Registrar's Office, Vaijapur. This witness has further deposed that as soon they reached in front of the office of the Sub-Registrar, the appellant accused saw them and rushed into the office of the Sub-Registrar. This witness followed him and also rushed into the Sub-Registrar's Office along with the other police staff. This witness caught-hold of the appellant from behind near his waist. The appellant took out a Razor from his right hand which was kept in his waist and assaulted this witness by means of said Razor, which has resulted in causing bleeding injury on the right side of the chest i.e. just below the collar bone of this witness. This witness has further deposed that when the appellant raised his hand to cause another injury by means of Razor on his person, Police Constable Gaikwad caught-hold of his hand and also snatched the Razor from the hand of the appellant. One of the buttons of the shirt as well as name plate of this witness fell down on the spot where the above referred incident had taken place, it has also come in the deposition of this witness that the clothes wore by the witness at the time of the incident i.e. shirt and banian were stained with blood. This witness has specifically deposed that two persons namely Baburao Kale and Yasinkhan Pathan were sitting on the bench near the place where the incident occurred. This witness felt some giddiness due to the injury sustained by him in the incident in question and therefore he was carried to nearby Government hospital. However, before this witness was carried to the hospital, he had directed Police Constable Gaikwad and one another person to take the appellant accused to the police station. He has identified Razor Article 3 before the Court as the same. The Medical Officer has examined this witness and stitched the injury.

11. This witness i.e. P.W. 7 Pallewad has also deposed that the appellant was externed from Aurangabad and Nashik Districts since 16-9-1993. In spite of that, the appellant entered town Vaijapur which is in Aurangabad district on the day of the incident and this witness had gone to the spot to arrest the appellant who had contravened the order of externment which was in force at the relevant time. This witness has also deposed that during the said period, the District Magistrate, Aurangabad, has also issued an order u/s 37 of the Bombay Police Act. This witness has lodged a detailed complaint at the Police Station at Vaijapur at about 3.00 p.m. which is exhibited as Exhibit 22.

12. In order to find out the veracity of the ocular testimony of this witness, we have carefully gone through the cross-examination of this witness. While going through the cross-examination of this witness, we find that all the material particulars of the prosecution case disclosed by this witness in his examination-in-chief have practically been re-affirmed in the cross-examination of this witness. There are no material contradictions or omissions brought on record by the

defence in the cross-examination of this witness. The tenor of the cross-examination of this witness is suggestive of the fact that the defence has not seriously challenged the presence of the accused at the relevant time before the Sub-Registrar's Office, on seeing the police staff appellant rushed into the Sub-Registrar's Office, this witness along with the police staff followed the appellant and also went inside the room of the Sub-Registrar's office, where this witness caught hold of the appellant from behind and at the relevant time, appellant/accused assaulted this witness by means of a Razor. While going through the entire cross-examination of this witness, we are of the opinion that the veracity of the testimony of this witness has not been shaken in the cross-examination. The evidence of this witness is consistent with the prosecution story put-forth by this witness in Exh. 22 and appears to be truthful and cogent. It is difficult for us to accept the contention raised by the learned Counsel that this witness has falsely implicated the accused in the crime in question merely because the appellant/accused violated the prohibitory orders issued by the concerned authorities in respect of the proceedings under the provisions of the Bombay Police Act. No material is brought on record in the cross-examination of this witness, so as to show that there was some enmity or hatred between this witness and the appellant. On the other hand, no sooner the information about the whereabouts of the appellant was received in the police station, this witness has taken immediate and prompt steps in order to apprehend the accused and discharged his official duty promptly and efficiently.

13. We have carefully scrutinized the evidence of P.W. 3 Yasinkhan, P.W. 5 Baburao and P.W. 6 Pramod, the eye-witnesses to the incident in question. After careful scrutiny of the evidence of these witnesses, we find that their evidence is consistent with the testimony of P.W. 7 Pallewad. P.W. 3 Yasinkhan on the day of the incident had gone to the Sub-Registrar's Office along with P.W. 5 Baburao for the purposes of obtaining a copy of the mortgage deed in respect of the house of P.W. 5 Baburao. This witness has deposed in his examination-in-chief that while he was present in the Sub-Registrar's Office, appellant rushed into the front room of the Sub-Registrar's Office. P.W. 7 Pallewad along with other police officials also came inside the room of the office of the Sub-Registrar, where P.S.I. Pallewad caught hold of the accused from behind. The appellant/accused took out Razor from his waist and assaulted P.S.I. Pallewad by means of the said Razor, which had caused injury on the right side chest of P.S.I. Pallewad. This witness has further stated that when the accused has raised his hand for second blow by means of Razor, P.S.I. (Sic Police Constable) caught hold the hand of the accused and snatched the Razor from the hand of the accused. This witness Yasinkhan is also examined as panch witness in the instant case by the prosecution, who has proved Exh. 8 (panchanama in respect of seizure of Razor) as well as Exh. 13 (panchanama in respect of seizure of button of shirt and name plate of P.W. 7) as well as other panchanamas drawn during the course of investigation of the case. While going through the cross-examination of this witness, we find that there are no material contradictions and omissions brought

on record by the defence in the cross-examination of this witness. The ocular testimony of this witness with regard to the material particulars of the prosecution case has not at all been shaken in the cross-examination of this witness. It is difficult for us to appreciate the contention raised by the learned Counsel for the appellant that merely because this witness is examined as a panch witness in the instant case for proving the above referred panchanamas, he can be termed as interested witness and his testimony can be disbelieved only on that count. In our opinion, the evidence of this witness corroborates the ocular testimony of P.W. 7 P.S.I. Pallewad.

14. We have also carefully considered the evidence of RW. 5 Baburao which shows that at the relevant time this witness was present in the office of the Sub-Registrar at Vaijapur. The appellant rushed into the room of the Sub-Registrar's Office who was followed by P.W. 7 Pallewad along with the other police staff. P.S.I. Pallewad caught hold of the appellant from behind. At that time, accused took out a Razor and assaulted P.S.I. Pallewad with the said Razor, which has resulted in causing bleeding injury on the right side of the chest of P.S.I. Pallewad. Accused Ashok again tried to inflict another blow on the person of P.W. 7 Pallewad, however, Police Constable Gaikwad caught hold the hand of the appellant and snatched the Razor from him. While going through the cross-examination of this witness, we find that nothing is brought on record by the defence in order to discard the ocular testimony of this witness. There are no material contradictions and omissions in the evidence of this witness. The evidence of this witness, therefore, in our opinion, corroborates the testimony of P.W. 7 Pallewad.

15. The evidence of P.W. 6 Police Constable Pramod would show that on the day of the incident i.e. on 10-2-1993, he was on duty and was present in the police station at Vaijapur. At about 1.15 p.m., P.S.I. Pallewad called this witness and told him that externee Ashok Kamlakar Pawar (appellant) had entered town Vaijapur and was seen on Dak Bungalow Road. This witness was the member of the staff which accompanied P.S.I. Pallewad, who had gone to apprehend the accused on the day of the incident after the information in respect of the appellant was received by the Police Station at Vaijapur. The testimony of this witness is consistent with the evidence given by P.W. 7 Pallewad as well as other eye-witnesses. While going through the cross-examination of this witness, there is nothing on record brought by the defence in order to doubt the veracity of the ocular testimony of this witness. This witness has specifically deposed in his examination-in-chief that when the accused was about to give the second blow with the Razor on the person of P.S.I. Pallewad, he caught hold of the hand of the accused and snatched the Razor from his hand.

16. After careful scrutiny of the evidence of the above referred prosecution witnesses, we find that the evidence of P.W. 7 P.S.I. Pallewad has been corroborated by the testimonies of P.W. 3 Yasinkhan, P.W. 5 Baburao and P.W. 6 Pramod in respect of the assault committed by the appellant by means of a Razor

in the Sub-Registrar's Office on P.W. 7 Pallewad.

17. After considering the direct evidence of the above referred prosecution witnesses, we think it proper to scrutinize the evidence of Medical Officer in order to find out whether the above referred evidence of the prosecution witnesses is corroborated by the medical evidence in the instant case. P.W. 4 Dr. Ganesh, at the relevant time was working as Medical Officer at Primary Health Centre, Vaijapur. On 10-2-1993, at about 2 p.m., P.W. 7 Pallewad was examined by Dr. Ganesh and found the following injuries :--

Incised wound over the right intracanalicular region, measuring 5 x 1 1/2 x 1 1/2 cms. Dr. Ganesh has issued injury certificate in respect of the injuries found on the person of P.W. 7 Pallewad. Same is exhibited as Exh. 17. The Razor (Article 3) was shown to this witness who had examined the same and opined that injury found on the person of P.W. 7 Pallewad could be caused by this weapon. The Medical Officer has further deposed that the injury sustained by Pallewad was on the chest, which according to him, is a vital part of the body and same was dangerous to life. On going through the cross-examination of this witness, nothing has been brought on record in order to adversely affect the ocular testimony of this witness. In our opinion, in the instant case, there is a corroboration coming-forth from the medical evidence also. The entire case of the prosecution in respect of the assault committed by the appellant by means of a Razor on the person of Pallewad has been corroborated by the medical evidence.

18. It is, however, true that there were some injuries found on the person of the appellant/accused. However, it has come on record that contused lacerated wound above the right eye, in the opinion of the Doctor, could be caused due to dash against the door. The another wound on the left hand of the appellant, in the opinion of the Medical Officer, might have been caused about two days prior to the date on which he was examined i.e. on 10-2-1993. The contusions found on the feet of the accused could have been caused due to dash of hard and blunt object, like stone. Hence, in our opinion, the prosecution has explained the injuries found on the person of the accused satisfactorily.

19. The contention canvassed by the learned Counsel for the appellant in respect of the evidence of eye-witnesses i.e. P.W. 3 Yasinkhan, P.W. 5 Baburao and P.W. 6 Pramod in our opinion, cannot be accepted because the close scrutiny of the evidence of the above referred witnesses coupled with evidence of P.W. 7 Pallewad appears to be truthful, cogent and consistent. Same is also corroborated by the medical evidence.

20. We have considered the evidence of P.W. 1 Khandagale. This witness was Police Station Officer at Vaijapur Police Station and was on duty on 10-2-1993 (i.e. the day of the incident from 8 a.m. to 2 p.m.). At about 12.30 p.m., he received the phone call from unknown person who had informed him that the appellant was behaving in a disorderly manner near Sub Registrar's Office,

Vaijapur. P.S.I. Pallewad was informed about the information received in the police station. This witness had recorded the said information in the Station Diary bearing Station Diary Entry No. 24, which is exhibited as Exh. 7. This witness has also recorded Station Diary Entry No. 25, which is exhibited as Exh. 7/A. Similarly this witness also took the Station Diary entry which is exhibited as Exh. 7/B. The recitals of the station diary entry Exh. 7/B recorded at about 1.40 p.m. on 10-2-1993 disclosed a cognizable offence as well as all the material particulars of the prosecution case and even if we consider that the investigation was set in motion on the basis of this Station Diary entry effected by P.W. 1 Khandagale and is treated as first information report, in our opinion, in the facts and circumstances of the instant case will not adversely affect the prosecution case and the statement of P.W. 7 P.S.I. Pallewad, recorded during the investigation can be treated as previous statement. It is, however true that if Exh. 7/B is considered as first information report, same has not been signed by the person who had lodged the same. However, in our opinion, this would be a mere irregularity and cannot be treated as illegality, which would vitiate the whole trial and, therefore, the contention raised by the learned Counsel in this regard, cannot be accepted.

21. We are well aware regarding the ingredients which the prosecution has to establish beyond all reasonable doubt before conviction can be awarded for the offence punishable u/s 307 of the Indian Penal Code. In order to convict the accused for the offence punishable u/s 307 of the Indian Penal Code, it is not necessary to show that bodily injury capable of causing death was inflicted. The courts are required to find out, whether the act, irrespective of its result was committed with the intention or knowledge and under those circumstances enumerated in section 307 of the Indian Penal Code. The intention of the offender has to be established from either the nature of his act actually committed by him or from other surrounding circumstances. Where injury has actually been caused to the victim, the prosecution has to establish that the intention of causing such injury or the nature of injury was sufficient in ordinary course of nature to cause death or was so imminently dangerous, that it would cause death.

22. It is well established that if the accused intended or had necessary knowledge to cause death, it is immaterial whether or not any hurt has been caused to the victim and the accused can be held liable for the offence punishable u/s 307 of the Indian Penal Code.

23. In the instant case, in order to find out the intention entertained by the appellant at the time of assault, it is necessary to consider the weapon used by the accused, the blows given by the accused, the placement of injury on the person of the victim and whether the said injury was dangerous to the life. Weapon of assault is Razor which is a dangerous weapon and the injury which was caused by such weapon by the accused was on the vital part of the body and same was as per the opinion of the Medical Officer, dangerous to the life of P.W. 7

Pallewad. The accused also wanted to inflict successive blows by means of the said Razor on the person of the P.W. 7, if the accused would not have been prevented at the relevant time by P.W. 6 Police Constable Gaikwad. After taking into consideration the legal as well as factual aspects of the present case on the basis of the above referred circumstances, it can safely be inferred that the appellant/accused had intended to cause death of P.W. 7 Pallewad and, therefore, the contention raised by the learned Counsel, in this regard, suffers from lack of merit and same cannot be accepted.

24. The ratio laid down in the above referred judgment of this Court, relied upon by the learned Counsel for the appellant, in view of the facts and circumstances of this case is not applicable. The circumstances established by the prosecution, in our opinion; are sufficient to establish that the appellant intended to kill P.W. 7 Pallewad by inflicting such injury which was dangerous to his life. The appellant also wanted to inflict successive blows by means of the Razor is also consistent with his above referred intention and, therefore, the finding arrived at and conviction awarded by the trial Judge for the offence punishable u/s 307 of the Indian Penal Code is just and proper.

25. Similarly, we have also taken into consideration the material brought on record by the prosecution in order to prove the offence punishable u/s 332 of the Indian Penal Code and in the circumstances of the present case, we see no reason to disbelieve the same. However, since the appellant has been convicted for the offence punishable u/s 307 of the I.P.C. and was sentenced to suffer R.I. for seven years, no separate sentence was necessary for the offence punishable u/s 332 of the I.P.C.

26. We have also considered the material placed on record by the prosecution for the offence punishable u/s 135 of the Bombay Police Act. Section 135 of The Bombay Police Act deals with penalty (or contravention of the rules or directions under sections 37, 39 or 40 of the said Act. According to the prosecution, instant case falls within the ambit of section 37(1)(a) of the Bombay Police Act, which deals with power to prohibit certain acts or prevention of disorder. The provisions of section 37(1) contemplate that Commissioner or District Magistrate, in areas under their respective authorities, may whenever and for such time as he shall consider necessary for the preservation of public peace or public safety, by a notification publicly promulgated or addressed to individuals, prohibit at any town, village or place or in vicinity of any such town, village or place carrying of arms, cudgels, swords, spears, guns, knives, sticks or lathis, or any other article which is capable of being used for causing physical violence. This provision requires publicly promulgation of the notification issued by the District Magistrate or Commissioner in view of this section. In the instant case, the evidence adduced by the prosecution, in this regard, does not show that the said notification was publicly promulgated as required by the provisions of the said Act and, therefore, in our opinion, the conviction and fine imposed on the appellant/accused for the offence punishable u/s 135 of the Bombay Police Act,

cannot be sustained.

27. We have carefully considered the evidence on record produced by the prosecution regarding the offence punishable u/s 142 of the Bombay Police Act and, in our opinion, the same is sufficient to convict the appellant/accused and the appellant/accused has rightly been convicted by the trial Court.

28. In the circumstances prevailing in our country, we cannot turn Nelson's eye to the deteriorating law and order situation. We all are aware that crime relating to physical violence is on increase. The instances of criminals showing total disregard to the law and order are also not unknown. The present case is one of such examples, where the appellant/accused has shown utter disregard to the law and order of this country. The assault on a Police Officer who is entrusted with important duty of maintaining law and order in our country, must be taken seriously and if the offence is proved against the offender, he must be dealt with sternly. However, in the instant case, since the State Govt. has not filed appeal for enhancement, it will not be appropriate now for us to consider this aspect of the case and we feel that the sentence awarded by the trial Court will serve the purpose.

29. In the result, the appeal is partly allowed.

The conviction and sentence awarded by the trial Court for the offence punishable u/s 307 of the Indian Penal Code is hereby confirmed.

The conviction of the appellant for the offence punishable u/s 332 of the Indian Penal Code is hereby maintained. The order of sentence passed by the trial Court for offence punishable u/s 332 of the Indian Penal Code is hereby set aside. Since the appellant is already awarded substantive sentence for the offence punishable u/s 307 of the Indian Penal Code it is not necessary to award separate sentence for the offence punishable u/s 332 of the Indian Penal Code.

The conviction and sentence of the appellant for the offence punishable u/s 135 of the Bombay Police Act is hereby set aside.

The conviction and sentence of the appellant for the offence punishable u/s 142 of the Bombay Police Act is hereby maintained.

Substantive sentence shall run concurrently.

30. Appeal partly allowed.