

(2018) 10 BOM CK 0160

In the Bombay High Court

Case No : Criminal Application No.1733 Of 2018

Hussain @ Ibrahim Yakub Shaikh

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision : 30-10-2018

Acts Referred:

Indian Penal Code, 1860 — Section 34, 120B, 212, 307

Citation : (2018) 10 BOM CK 0160

Hon'ble Judges : A. M. Badar, J

Bench : Single Bench

Advocate : Debajyoti Talukdar, S.V.Gavand

Final Decision : Disposed Off

Judgement

1 This appeal by original accused nos.1 to 3 is taken up for hearing by dispensing with the paper book on the request of the learned counsel appearing for appellants/accused nos.1 to 3 as it is reported that by now the appellants/accused have already undergone actual sentence of about 5 years out of total substantive sentence of 7 years of rigorous imprisonment imposed on them by the learned trial court. It is reported that they all are in jail from the year 2013.

2 The appellants/accused nos.1 to 3, by this appeal, are challenging the judgment and order dated 14th October 2016 passed by the learned Additional Sessions Judge, Pune, in Sessions Case No.314 of 2014, thereby convicting them of the offence punishable under Section 307 read with 34 of the Indian Penal Code and sentencing each of them to suffer rigorous imprisonment for 7 years apart from payment of fine of Rs.2,000/Â, and in default, to undergo further rigorous imprisonment for a period of 3 months. The appellants/accused nos.1 to 3 were acquitted of offences punishable under

Sections 120B and 212 read with 34 of the Indian Penal Code. The co-accused were acquitted of all offences.

3 Briefly stated, facts of the prosecution case are thus :

(a) Injured PW7 Sudarshan Choudhari was the leader of a panel contesting election of Gram Panchayat Sortapwadi. He had settled the dispute

between Sunny Choudhary and Aakash Gore over some post on the Facebook. According to the prosecution case, this act on the part of injured PW7

Sudarshan Choudhari has resulted in the incident of murderous assault on him on 25th July 2013.

(b) According to the prosecution case, there was meeting of Gram Panchayat Sortapwadi on 25th July 2013. Injured PW7 Sudarshan Choudhari along

with his friend PW6 Vaibhav Choudhari and driver PW5 Ravindra Gunjal went to the office of Gram Panchayat Sortapwadi at about 10.30 a.m. of

that day. Injured PW7 Sudarshan Choudhari went inside the office of the Gram Panchayat whereas his driver PW5 Ravindra Gunjal and his friend

PW6 Vaibhav Choudhari had chosen to stay in the four wheeler vehicle itself, which was parked just in front of the office of the Gram Panchayat. At

about 12.15 p.m. of 25th July 2013, PW7 Sudarshan Choudhari started leaving the office of the Gram Panchayat Sortapwadi. When he was getting

down the staircase of the building of the Gram Panchayat, appellants/accused nos.1 to 3 namely Shrikant alias Rajendra Vilas Choudhary, Vithal

Laxman Gade and Hussain @ Ibrahim Yakub Shaikh met him. They had a talk. Thereafter, PW7 Sudarshan Choudhari proceeded towards his four

wheeler vehicle. When he reached near his vehicle and was about to open the door thereof, appellant/accused no.1 Shrikant @ Rajendra Choudhary

assaulted PW7 Sudarshan Choudhari by means of sattu on head as well as other parts of the body. Appellant/accused no.2 Vithal Gade assaulted

injured PW7 Sudarshan Choudhari by means of a sword on face as well as other parts of body whereas appellant/accused no.3 Husain @ Ibrahim

Shaikh assaulted him by means of a sword on neck and other parts of the body. Being seated in that vehicle, PW5 Ravindra Gunjal â driver of the

injured as well as PW6 Vaibhav Choudhari witnessed the incident of murderous assault on PW7 Sudarshan Choudhari. After hearing shouts of PW7

Sudarshan Choudhari when he was being assaulted, PW4 Avinash Memane, Peon of the Gram Panchayat Sortapwadi also witnessed the incident of

assault from gallery of the building of the Gram Panchayat.

(c) Injured PW7 Sudarshan Choudhari was then taken to Noble Hospital, Hadapsar, Pune, where he was treated by PW8 Dr.Suresh Dabalgaonkar.

PW6 Vaibhav Choudhari reported the incident to police on 25th July 2013 itself which has resulted in registration of Crime No.373 of 2013 with Loni

Kalbhor Police Station, District Pune.

(d) Routine investigation followed. During the course of investigation vide Memorandum of Panchnama Exhibit 161, Investigating Officer PW10

Sanjay Ahiwale, Assistant Police Inspector, on the basis of voluntary disclosure statement of appellant/accused no.1 Shrikant @ Rajendra Choudhary

made in presence of panch witness PW2 Ganesh Choudhari had recovered two satturs, one sword, three jeans pants and three shirts. Those articles

were seized by Recovery panchnama Exhibit 162. Spot of the incident was inspected by PW11 Narayan Pawar, Assistant Police Inspector, in

presence of panch witness PW1 Shamrao Adav. Spot panchnama Exhibit 135 was prepared on the day of the incident itself. Blood found on the spot

came to be collected and seized. The spot was in front of the office of the Gram Panchayat Sortapwadi. Blood stained clothes of the injured came to

be seized vide Seizure panchnama Exhibit 136. During the course of investigation a bike was also seized. Some articles were seized from vehicle of

Indica make in presence of PW3 Sugriv Adsule. Statement of witnesses came to be recorded. Seized articles were sent for chemical analysis and on

completion of routine investigation, the appellants/accused along with other co-accused were charge-sheeted. It is seen that order of framing

Charge against some of the accused persons namely Sunil Sambhaji Chorge, Vijay Govindrao Chorge and Pravin Uttam Chorge was quashed and set

aside by this court.

(e) Charge for offences punishable under Sections 307, 120B and 212 read with 34 of the Indian Penal Code was framed and explained to the

appellants/accused nos.1 to 3 along with other co-accused. They abjured their guilt and claimed trial.

(f) In order to bring home the guilt to the appellants/accused as well as other co-accused, the prosecution has examined in all twelve witnesses.

Panch witness Shamrao Adav is examined as PW1. In his presence Spot panchnama Exhibit 135 was drawn on 25th July 2013 and blood found on the

spot came to be collected and seized. Ganesh Choudhari, another panch, is examined as PW2. In his presence, Bajaj Pulsar motorcycle was seized

vide panchnama Exhibit 156. This witness had also witnessed voluntary disclosure statement of appellant/accused no.1 Shrikant @ Rajendra

Choudhary and showing of the spot of parking of the vehicle. Similarly, this witness has also witnessed voluntary disclosure statement of

appellant/accused no.3 Husain @ Ibrahim Shaikh regarding the knowledge about spot where the bike was parked. PW2 Ganesh Choudhari, panch

witness, had heard voluntary disclosure statement of appellant/accused no.1 Shrikant @ Rajendra Choudhary by which he had shown his willingness

to show the spot where weapon and clothes were kept. The said statement is at Exhibit 161. In pursuant to that voluntary disclosure statement, two

satturs, one sword, three pants and three shirts came to be seized vide Seizure panchnama Exhibit 162 by PW10 Sanjay Ahiwale, Assistant Police

Inspector. PW4 Avinash Memane, PW5 Ravindra Gunjal, PW6 Vaibhav Choudhari are examined as eye witnesses to the incident of murderous

assault on injured PW7 Sudarshan Choudhari. Medical Officer Dr.Suresh Dabalganekar of Noble Hospital is examined as PW8. This witness proved

Medico Legal Certificate and Discharge Card at Exhibits 178 and 179 respectively apart from other documents of medical treatment given to the

injured. PW9 Jitendra Jadhav is a panch witness to the seizure of vehicle vide panchnama Exhibit 189. PW10 Sanjay Ahiwale, Assistant Police

Inspector, has conducted part investigation including recovery of weapons and clothes on the basis of voluntary disclosure statement of

appellant/accused no.1 Shrikant @ Rajendra Choudhary. PW11 Narayan Pawar, Assistant Police Inspector, is also examined as the Investigating

Officer. Dr.Chandrashekhar Raman, who had examined the injured, is examined as PW12.

(g) Defence of the appellants/accused was that of total denial. However, they did not enter in defence.

(h) After hearing the parties, by the impugned judgment and order dated 14th October 2016, the learned trial court was pleased to convict the

appellants/accused nos.1 to 3 of the offence punishable under Section 307 read with 34 of the Indian Penal Code, and accordingly they are sentenced,

as indicated in the opening paragraph of this judgment.

4 I have heard Shri Talukdar, the learned counsel appearing for the appellants/accused. He took me through the entire evidence adduced by the prosecution and argued that the evidence of the injured witness cannot be relied because there were many cases filed against him and he had also filed many cases against several persons. This indicates that he was having many enemies and there is chance of assaulting him by other persons. The learned counsel further argued that the prosecution has failed to establish motive of the crime in question, and therefore, prosecution case is doubtful. It is further argued that accused persons are arraigned by even stating their nick names. Names of the appellants/accused are not tallying with the FIR. The injured was not knowing them. There is nothing to connect the appellants/accused with the main accused and three or four main accused persons are already discharged or acquitted. It is further argued that presence of the First Informant on the spot is doubtful as his blood stained clothes were not seized. PW2 Ganesh Choudhari was present throughout the incident. Medical Officer has deposed that the injuries were caused by a hard and blunt object. Therefore, the appellants/accused are also entitled for acquittal. The learned counsel further argued that no Test Identification Parade was conducted after arrest of the appellants/accused. Though PW11 Narayan Pawar, Assistant Police Inspector, has stated that there were two to three persons with the injured, no inquiry on this aspect was made. The Investigating Officer has stated that PW6 Vaibhav Choudhari was not there. The learned counsel for the appellants/accused submitted that all these aspects show that the appellants/accused are falsely implicated in the crime in question. Therefore, they are entitled for acquittal.

5 As against this, the learned APP supported the impugned judgment and order of conviction and resultant sentence by arguing that apart from evidence of the injured witness, there are three eye witnesses to the incident and evidence of all these witnesses are cogent, trustworthy, reliable and consistent. The learned APP further argued that evidence of the injured is corroborated by medical evidence on record.

6 I have carefully examined the rival submissions and also perused the record and proceedings.

7 Evidence adduced by the prosecution regarding sustaining murderous assault by injured PW7 Sudarshan Choudhari is overwhelming and

trustworthy. As deposed by eye witnesses examined by the prosecution namely injured PW7 Sudarshan Choudhari, his friend PW6 Vaibhav

Choudhari, his driver PW5 Ravindra Gunjal and employee of the Gram Panchayat PW4 Avinash Memane, the incident of murderous assault on the

injured took place in front of the office of the Gram Panchayat. This evidence is not at all shattered in cross-examination of all these witnesses. On

the contrary, from cross-examination of injured PW7 Sudarshan Choudhari, the defence has elicited the fact that his vehicle was parked at a distance

of about 10 to 15 feet from the office of Gram Panchayat and the incident of assault took place by the side of that vehicle. On this backdrop, version

of PW1 Shamrao Adav "panch witness to the Spot panchnama makes it clear that the incident of assault on the victim took place in front of the

office of Gram Panchayat Sortapwadi. Blood was found spilled on the scene of occurrence and the sample of the same came to be seized. Recitals of

Spot panchnama Exhibit 135 are also in tune with the prosecution case.

8 Trustworthy evidence of PW5 Ravindra Gunjal "driver of the injured and PW6 Vaibhav Choudhari goes to show that immediately after the

assault, injured PW7 Sudarshan Choudhari was taken to the Noble Hospital where he was admitted for medical treatment. PW8 Dr.Suresh

Dabalgaoonkar had examined injured PW7 Sudarshan Choudhari on 25th July 2013 itself. He noticed the following injuries on person of PW7

Sudarshan Choudhari :

- (1) Incised Injury " left forearm 4 x 2 x 1.5 cms.
- (2) Incised Injury " left shoulder 3 x 1.5 x 1
- (3) Incised Injury " Linear left arm 5 x .5 cm
- (4) Incised Injury " left occipital parietal injury 5 x 1.5 x 1
- (5) Incised Injury " left parietal region 3 x 1 x 1
- (6) Incised Injury " Mid occipital injury 5 x 2 x 1 bone deep
- (7) Incised Injury " Right temporal zygonatic 5 x 5.5
- (8) Incised Injury " right shoulder 7 x 4 muscle deep
- (9) Incised Injury " right elbow 12 x 3 x by muscle deep
- (10) Incised Injury " upper lip 1 x .5 x 5
- (11) Abrasion left pinna 2 x 2

- (12) Abrasion left great toe 2 x 2
- (13) Abrasion right great toe 2 x 2
- (14) Fracture parietal bone
- (15) Fracture right clavical
- (16) Fracture left ulma

It is, thus, seen that there were 16 injuries on vital parts of injured PW7 Sudarshan Choudhari which he had sustained on 25th July 2013.

Considering the seat of injuries and their size as well as nature, it does become clear that injured PW7 Sudarshan Choudhari had sustained murderous assault on 25th July 2013.

Resultantly, he is the injured witness in the subject crime.

9 According to the prosecution case, apart from evidence of the injured witness, there are three witnesses who had seen happening of the incident of

murderous assault on the injured. In the matter of Balraje @ Trimbak vs. State of Maharashtra¹ the Honourable Apex Court has held that when the

eye witnesses are stated to be interested and inimically disposed towards the accused, it would not be proper to conclude that they would shield real

culprit and rope in innocent persons. If after careful analysis and scrutiny of their evidence, evidence given by such witnesses appears to be clear,

cogent and credible, then evidence of such witnesses cannot be discarded on the assumption that they are either interested or inimically disposed

towards the accused. This principle of appreciation of evidence of prosecution witnesses will have to be kept in mind as one of the eye witness is

driver whereas the another is friend of the injured. How evidence of injured witness is required to be appreciated is clarified in catena of

judgments of the Honourable Supreme Court. In Shivalingappa Kallayanappa vs. State of Karnataka the Honourable Supreme has held

that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major

contradictions and discrepancies for the reason that his presence on the scene stands established in case it is proved that he suffered the injury during

the said incident. In State of Uttar Pradesh vs. Kishan Chand³ a similar view has been reiterated observing that the testimony of a stamped witness

has its own relevance and efficacy. The fact that the witness sustained injuries at

the time and place of occurrence lends support to his testimony that he was present during the occurrence. In case the injured witness is subjected to lengthy cross-examination and nothing can be elicited to discard his testimony, it should be relied upon as held in the matter of Krishan vs. State of Haryana⁴. Keeping in mind these principles of appreciation of evidence of injured as well as interested witnesses, let us examine evidence adduced by the star witnesses of the prosecution.

10 PW7 Sudarshan Choudhari is the victim of the crime in question, commission of which was witnessed by his driver PW5 Ravindra Gunjal and his friend PW6 Vaibhav Choudhari apart from peon of Gram Panchayat Sortapwadi PW4 Avinash Memane. Evidence of all these witnesses, as such, is

of utmost importance for inferring guilt, if any, of the appellants/accused. Let us, therefore, consider what PW7 Sudarshan Choudhari says about the

incident in question. He testified that at about 10.30 a.m. of 25th July 2013, along with his driver PW5 Ravindra Gunjal and his associate PW6 Vaibhav

Choudhari, he went to the office of Gram Panchayat Sortapwadi by his vehicle. He deposed that PW5 Ravindra Gunjal is driver and PW6 Vaibhav

Choudhari stayed in the vehicle whereas he went to the office of the Gram Panchayat Sortapwadi. When he was getting down from the staircase of

the Gram Panchayat, he met appellants/accused namely Shrikant @ Rajendra Choudhary, Vithal Gade and Husain @ Ibrahim Shaikh. He talked with

them and then proceeded towards his vehicle. As per his version when he was opening the door of his vehicle, he suffered a blow on his head. What

he saw thereafter is stated by him in his evidence. Injured PW7 Sudarshan Choudhari deposed that he saw appellant/accused no.1 Shrikant @

Rajendra Choudhary had assaulted him on his head by means of sattur. Appellant/accused no.2 Vithal Gade assaulted him on face by means of sword

whereas appellant/accused no.3 Husain @ Ibrahim Shaikh assaulted him by sword on the neck. Then, they all had given blows of weapons on his

shoulder, hands and fingers. PW7 Sudarshan Choudhari stated that because of this assault, he fell down and the accused persons ran away. This

injured witness had given the cause and motive for assault as his own efforts in settlement of dispute between Sunny Choudhary and Aakash Gore

over some post on Facebook. As per version of this witness, his blood stained clothes were then seized by the police. Evidence of this witness shows

that he was admitted to Noble Hospital where he had taken treatment. This witness has identified his assailants while in the dock.

11 Cross-examination of PW7 Sudarshan Choudhari shows that he was leading a panel in the election of the Gram Panchayat. His presence on the

spot of the incident was brought on record by his cross-examination. The defence has elicited from this witness that on the day of incident i.e. on

25th July 2013, there was meeting of the Gram Panchayat. It is further brought on record that during the course of that meeting, this witness was

sitting in the office of the Gram Panchayat Sortapwadi. Duration of the incident of interaction with the accused persons and the actual assault is also

brought on record from cross-examination of injured witness PW7 Sudarshan Choudhari. From his cross-examination, it is brought on record that

after leaving the Gram Panchayat office, injured PW7 Sudarshan Choudhari had a talk for about 1½ minute with the accused persons. Then he

proceeded further towards his vehicle which was just 10 to 15 feet away from the office of the Gram Panchayat. The defence has further brought on

record from cross-examination of injured PW7 Sudarshan Choudhari that the incident of assault on him took place by the side of his vehicle and time

of about 1½ minutes was taken for the incident of assault. From cross-examination of this witness, it is further brought on record that he had filed

cases against Barkya Gade and Anil Choudhari, but subsequently settled those cases. Similarly, two cases were filed against him in the court.

12 In the case in hand, theory of mistaken identity or false implication of the appellants/accused persons does not deserve a moment's consideration.

Evidence of injured PW7 Sudarshan Choudhari shows that he was knowing all appellants/accused. He identified them while in the dock as his

assailants. Filing of cases by and against this injured witness cannot give inference to assault on him by others because the appellants/accused persons

were known to this witness and he has categorically deposed the mode and manner in which the appellants/accused persons had assaulted him.

Therefore, though the assailants/accused persons are having nick names also, that does not cast a shadow of doubt on version of this injured witness.

Motive of the assault is also coming on record from cross-examination of this witness, though in cases where the injured deposes about the assault

on him by the appellants/accused, there is no need to prove the motive for the assault. Be that as it may, let us examine whether evidence of injured

PW7 Sudarshan Choudhari is corroborated by evidence of most natural witnesses to the incident of assault, namely, PW5 Ravindra Gunjal and PW6

Vaibhav Choudhari. This is because, the defence has elicited from cross-examination of injured PW7 Sudarshan Choudhari that the incident of

assault took place near the vehicle parked at a distance of 10 to 15 feet away from the office of the Gram Panchayat. Apart from evidence of PW7

Sudarshan Choudhari, evidence of PW5 Ravindra Gunjal and PW6 Vaibhav Choudhari shows that they both had accompanied PW7 Sudarshan

Choudhari to the office of Gram Panchayat Sortapwadi, at about 10.30 a.m. of 25th July 2013. Evidence of all these three witnesses is consistent to

the effect that then PW7 Sudarshan Choudhari had been to the office of the Gram Panchayat where as PW5 Ravindra Gunjal is " driver and PW6

Vaibhav Choudhari stayed in the vehicle of PW7 Sudarshan Choudhari and that vehicle was parked just near the office of the Gram Panchayat. PW5

Ravindra Gunjal and PW6 Vaibhav Choudhari, in unison, have deposed that at about 12.15 p.m. of 25th July 2013, PW7 Sudarshan Choudhari came

out of the office of the Gram Panchayat and when he was opening the door of the vehicle in which both of them were sitting, appellants/accused

persons, namely, Shrikant @ Rajendra Choudhary, Vithal Gade and Husain @ Ibrahim Shaikh, came there. As per consistent version of PW5

Ravindra Gunjal and PW6 Vaibhav Choudhari, appellant/accused no.1 Shrikant @ Rajendra Choudhary assaulted PW7 Sudarshan Choudhari by

means of a sattur on head and hand. Appellant/accused no.2 Vithal Gade assaulted PW7 Sudarshan Choudhari by means of a sword on head, hand,

face and neck, whereas appellant/accused no.3 Husain @ Ibrahim Shaikh assaulted PW7 Sudarshan Choudhari by means of a sword on head and

hand. Both these witnesses further deposed that after the assault, appellants/accused ran away and then they shifted injured PW7 Sudarshan

Choudhari to the Noble Hospital, Pune. PW6 Vaibhav Choudhari deposed that then he lodged the FIR of the subject crime. Both these witnesses have

duly identified the appellants/accused as assailants of PW7 Sudarshan Choudhari.

13 From cross-examination of PW5 Ravindra Gunjal identity of appellant/accused no.1 Shrikant @ Rajendra Choudhary is confirmed. It is brought on

record by cross-examination of PW5 Ravindra Gunjal that appellant/accused no.1 Shrikant @ Rajendra Choudhary is also known as Shrikant

Choudhary. By cross-examining PW6 Vaibhav Choudhari, the defence has brought on record that this witness as well as PW5 Ravindra Gunjal were sitting on the front seat of the vehicle when the assault took place. In cross-examination of PW5 Ravindra Gunjal it is brought on record that the attack was not a sudden attack. Cross-examination of PW7 Sudarshan Choudhari as well as that of PW6 Vaibhav Choudhari and PW5 Ravindra Gunjal shows that the actual assault continued for 1½ minutes. Evidence of these three witnesses goes to show that they were knowing the appellants/accused very well. The actual assault took place when PW5 Ravindra Gunjal and PW6 Vaibhav Choudhari were sitting inside the vehicle and when injured witness PW7 Sudarshan Choudhari was opening the door of that vehicle. Thus, when all these witnesses were previously knowing the appellants/accused and when the incident of assault took place just near the vehicle in which PW5 Ravindra Gunjal and PW6 Vaibhav Choudhari were sitting, there cannot be any reason to jettison evidence of these two eye witnesses to the assault on surmises and conjectures that there is possibility of mistaken identity of the assault as they are arraigned as accused by their names and nick names. The injured as well as these two witnesses had ample opportunity to see the assailants who were known to all of them. Evidence of all these three witnesses regarding identity of the appellants/accused is not at all shattered in the cross-examination. Version of PW6 Vaibhav Choudhari is gaining full corroboration from the FIR Exhibit 174 lodged by him with promptitude, soon after the assault.

14 There is one more eye witness to the incident of assault and he is PW4 Avinash Memane - Peon of the Gram Panchayat. Evidence of this witness shows that from the gallery of the building of Gram Panchayat he had witnessed the assault. Cross-examination of this witness shows that he is acquainted not only with the injured but also with the appellants/accused. PW4 Avinash Memane has stated in his evidence that after meeting of the Gram Panchayat held on 25th July 2013, he heard shouts and saw appellant/accused no.1 Shrikant @ Rajendra Choudhary giving blows of sattu and appellant/accused no.2 Vithal Gade as well as appellant/accused no.3 Husain @ Ibrahim Shaikh giving blows of sword on person of PW7 Sudarshan Choudhari. This witness has also duly identified the appellants/accused as assailants. Some insignificant stuff is brought on record from cross-

examination of this witness. That is regarding situation of the spot of the incident and presence of other persons in the office of the Gram Panchayat.

However, cross-examination of this witness shows that he is a neutral witness. From his cross-examination it is brought on record that

appellant/accused no.2 Vithal Gade and appellant/accused no.3 Husain @ Ibrahim Shaikh are neither his friends nor his enemies. It is also brought on

record from his cross-examination that PW5 Ravindra Gunjal is driver of PW7 Sudarshan Choudhari. This fact makes it clear that PW5 Ravindra

Gunjal is the natural witness to the incident in question. Considering the fact that from cross-examination of PW4 Avinash Memane it is brought on

record that he was acquainted with the appellants/accused persons, there is no question of mistaken identity of the assailants by this witness. This

witness, as seen from his cross-examination, had witnessed the incident which lasted for 1½ minutes giving full opportunity to him to identify the

assailants, who were known to him.

15 The net result of foregoing discussion requires me to hold that evidence of injured PW7 Sudarshan Choudhari, which is corroborated by most

natural witnesses to the incident namely PW4 Avinash Memane, PW5 Ravindra Gunjal and PW6 Vaibhav Choudhari, is fully trustworthy and

acceptable. There is nothing in long and searching cross-examination of all these witnesses to disbelieve their version regarding the assault by them

on PW7 Sudarshan Choudhari.

16 Cumulative effect of eye witness account given by eye witnesses and the injured witness coupled with evidence of Medical Officer PW8

Dr.Suresh Dabalganekar proves the fact that on 25th July 2013, all appellants/accused had assaulted injured PW7 Sudarshan Choudhari by means of

deadly weapons.

17 Evidence of the eye witnesses as well as the injured is gaining corroboration from the version of PW1 Shamrao Adav a panch witness, so also

PW11 Narayan Pawar, Investigating Officer. Consistent evidence of both these witnesses shows that soon after the incident, the spot of the incident

was inspected on 25th July 2013 and Spot panchnama Exhibit 135 came to be prepared. Evidence of these two witnesses as well as recitals in the

Spot panchnama Exhibit 135 shows that spot was in front of building of Gram Panchayat Sortapwadi and the cement road at the spot was stained with

blood. Sample of the blood found lying on the spot came to be collected and seized by preparing the Spot panchnama. Similarly, evidence of both these

witnesses shows that blood stained clothes of injured PW7 Sudarshan Choudhari came to be seized by preparing panchnama Exhibit 136. This witness

certainly corroborates the version of injured PW7 Sudarshan Choudhari as well as evidence of eye witnesses.

18 In presence of PW2 Ganesh Choudhari &" panch witness, appellant/accused no.1 Shrikant @ Rajendra Choudhary had made a voluntary

disclosure statement on 28th November 2013. The same was made in presence of Investigating Officer PW10 Sanjay Ahiwale, Assistant Police

Inspector. PW2 Ganesh Choudhari and PW10 Sanjay Ahiwale, Assistant Police Inspector, have proved said disclosure statement at Exhibit 161. As

per version of these two witnesses, appellant/accused no.1 Shrikant @ Rajendra Choudhary had taken them to a shed near Kirloskar Company of

Hadapsar and from the gunny bag kept there, had recovered two satturs, one sword, three pants as well as three shirts. The same came to be seized

vide Seizure panchnama Exhibit 162. These witnesses have identified the seized articles including the weapons. Merely because PW2 Ganesh

Choudhari had seen the appellants/accused in handcuff at the police station, one cannot infer that they were under duress at that time. As such, on this

count alone, it cannot be said that recovery is vitiated. Along with forwarding letter Exhibit 219 seized weapons were sent for chemical analysis. The

Chemical Analyzer's Report at Exhibit 191 shows that the weapons seized at the instance of appellant/accused no.1 Shrikant @ Rajendra Choudhary

were stained with human blood. Though it is argued that names of assailants are not tallying with the names mentioned in the FIR, substantive

evidence of the First Informant so also the recitals in the FIR unerringly points out that those were the appellants/accused who had assaulted injured

PW7 Sudarshan Choudhari. Merely because blood stained clothes of PW6 Vaibhav Choudhari were not seized by the police on the spot, his presence

on the spot of the incident cannot be doubted. As the injured as well as eye witnesses are naming the appellants/accused as the assailants, it is not

necessary to connect them with the other accused persons.

19 Now let us examine whether prosecution has proved commission of the offence punishable under Section 307 read with 34 of the Indian Penal

Code by the appellants/accused persons. As noted in the foregoing paragraphs, PW8 Dr.Suresh Dabalgaoonkar of Noble Hospital had found thirteen

external injuries as well as three internal injuries on body of injured PW7 Sudarshan Choudhari. Evidence of this Medical Officer shows that majority

of injuries were caused by sharp weapons and three injuries were caused by hard and blunt object. PW12 Dr.Chandrashekhar Raman is a

Neurosurgeon. His evidence shows that injured PW7 Sudarshan Choudhari had suffered fracture of parietal bone apart from incised injuries.

20 Evidence on record shows that PW7 Sudarshan Choudhari had suffered injuries by sharp edged weapons such as sword and sattur. Evidence of

the Medical Officer shows that the injuries suffered by PW7 Sudarshan Choudhari might have caused his death. In order to bring home the guilt for

the offence punishable under Section 307 of the Indian Penal Code, causing of injuries is not at all necessary. Intention coupled with an overt act is

sufficient to make out the offence punishable under Section 307 of the Indian Penal Code. In the case in hand, all appellants/accused were armed with

deadly weapons. They had chosen head as well as upper body of the victim to cause wounds on him by means of sattur and swords. Several injuries

were authored by them on vital parts of body of PW7 Sudarshan Choudhari. This act on the part of the appellants/accused reflects their intention, and

in such situation, if they had caused death of PW7 Sudarshan Choudhari, then they would have certainly be held guilty of committing murder of injured

PW7 Sudarshan Choudhari. Thus, the prosecution has certainly made out the offence punishable under Section 307 read with 34 of the Indian Penal

Code against the appellants/accused.

21 Considering the fact that by assaulting injured PW7 Sudarshan Choudhari by means of deadly weapons, they all had caused injuries on vital parts of

body of PW7 Sudarshan Choudhari, it cannot be said that sentence of rigorous imprisonment of 7 years apart from fine of Rs.2000/Â and default

sentence of rigorous imprisonment of 3 months is too harsh or not proportionate to the crime committed by the appellants/accused and held to be

proved.

22 In this view of the matter, the appeal is devoid of merits, and therefore, the order :

ORDER

(i) The appeal is dismissed.

(ii) In view of dismissal of appeal, Criminal Application No.1733 of 2018 stands disposed of.