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**(2002) 07 BOM CK 0044**

**In the Bombay High Court**

**Case No : Criminal Appeal No. 108 of 1997**

Jamil Fihmed @ Sadalalu Abdul Jamil Qureshi @ Jamil Mohd.  
Abdul Majid Qureshi

**APPELLANT**

**Vs**

The State of Maharashtra

**RESPONDENT**

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**Date of Decision : 08-07-2002**

**Acts Referred:**

Arms Act, 1959 — Section 25, 4  
Bombay Police Act, 1951 — Section 135, 37  
Penal Code, 1860 (IPC) — Section 113, 114, 224, 302, 320

**Citation : (2003) 2 ALD(Cri) 128**

**Hon'ble Judges : J.G. Chitre, J**

**Bench : Single Bench**

**Advocate : Pratibha Patil, for the Appellant; Shringarpure, Assistant Public Prosecutor, for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

J.G. Chitre, J.—Smt. Pratibha Patil for the appellant and Shri Shringarpure, A.P.P. for the prosecution. Both of them have been heard at length.

2. The appellant is hereby assailing correctness, propriety and legality of the order of conviction and sentence passed by the learned Additional Sessions Judge in Sessions Case No. 1993, wherein the appellant Jamil Ahmed @ Sadalalu Abdul Jalil Qureshi @ Jamil Mohd. Abdul Majid Qureshi has been convicted for the offences punishable under provisions of (1) Section 224 r/w Section 114 of Indian Penal Code and sentenced to undergo rigorous imprisonment for one year, (2) u/s 307 r/w Section 114 of Indian Penal Code and sentenced to undergo rigorous imprisonment for 5 years and to pay a fine of Rs. 500/-, in default to undergo further simple imprisonment for 15 days, (3) Section 333 r/w Section 113 of I.P.C. and sentenced to undergo rigorous imprisonment for 5 years and to pay a fine of Rs. 500/-, in default to suffer further simple imprisonment for 15 days, (4) Section 4 r/w Section 25 of Arms Act and sentenced to undergo

rigorous imprisonment for one year and to pay fine of Rs. 500/-, in default to suffer simple imprisonment for 15 days, and (5) Section 37(i) r/w Section 135 of Bombay Police Act and sentenced to suffer rigorous imprisonment for 15 days. The substantive sentences have been directed to run concurrently.

3. The prosecution case in brief is that on 22/3/1992 at about 7.45 P.M. victim Sayaji Murlidhar Deshmukh, PC Bk. No. 20923 attached to Nehru Nagar Police Station was patrolling on his bicycle near Welcome Cold Drink House, near Kuria Railway Station and at that time he noticed some people coming from Kurla Railway Station, helter Skelter. By noticing those people running in such a fashion, he by leaving his bicycle near Welcome Cold Drink House went towards Railway line and noticed that two persons armed with weapons were terrorizing the members of public. He noticed that one Atik was holding chopper in his hand and appellant Sadalalu was holding mini sword in his hand which is locally known as Gupti. As per prosecution case P.W. Sayaji Deshmukh was knowing both of them as they had previous police record. He caught hold of Atik, associate of appellant. Thereupon, Atik assaulted him on his left arm with the chopper and at that time appellant Sadalalu assaulted P.W. Sayaji Deshmukh with Gupti on his left chest and right thigh and thereafter both of them ran towards Kasai Wada. P.W. Sayaji Deshmukh was bleeding profusely. He attempted to go towards police chowki but fell down and was removed to Sion Hospital. P.S.I. from Nehru Nagar Police Station recorded his F.I.R. Investigation proceeded which resulted in a trial which appellant faced along with his associate. The learned Additional Sessions Judge after appreciating the evidence on record in view of the submissions advanced, passed the order of conviction and sentence, which is being assailed by this appeal.

4. Smt. Pratibha Patil, Counsel appearing for the appellant submitted that the learned Judge committed error in appreciating the evidence and in accepting the prosecution evidence by holding the appellant guilty of the charges levelled against him. She submitted that as there was crowd. P.W. Sayaji Deshmukh could not have seen the appellant and on account of mistaken identity, the appellant might have been falsely implicated in this false case. She submitted that the appellant should have been acquitted. Shri Shringarpure, A.P.P. appearing for the prosecution submitted that the evidence of P.W. Sayaji Deshmukh has been well corroborated by other prosecution witnesses, so also by the evidence of recovery of Gupti at the instance of appellant Sadalalu. He submitted that the Injury was so serious that Sayaji Deshmukh would have died, had he not been shifted to Sion hospital well in time. He submitted that the appeal be dismissed.

5. After appreciating the evidence on record in view of the submissions advanced before me and considering the evidence recorded by the trial Court, this Court comes to the conclusion that the order of conviction and sentence is correct, proper and legal for the reasons recorded hereunder.

6. P.W. Sayaji Deshmukh has categorically stated in his evidence that it was the

appellant and his associate who assaulted him with weapons. It is his evidence that, appellant gave a blow by mini sword-Gupti at his left flank of chest, which resulted in bleeding injury. His evidence has been well corroborated by the evidence of Ibrahim Rahim Shaikh who stated in his evidence initially that he saw the present appellant with his associate Atik whom he was knowing by his name. His evidence in examination-in-chief has been clarified in the cross-examination by paragraph No. 7. When answering a question asked to him in the cross-examination he clarified that he was knowing appellant accused, he was being called as Lalu. Keeping in view this aspect of the evidence of P.W. Ibrahim Shaikh, there remains no substance in the criticism levelled by the Counsel for the appellant that the evidence of Sayaji Deshmukh has not been corroborated by any independent witness.

7. Apart from that, the Evidence Act does not require that the evidence should be proved by particular number of witnesses. Even evidence of single witness is sufficient for basing a conviction and resultant sentence if it satisfies the tests of truth if tested on the touch-stone of human experience. If the evidence of the victim is inspiring the confidence in the judicial mind, there is absolutely no difficulty in accepting it for basing a conviction and resultant sentence. What is to be seen is whether it is suffering from any inherent infirmity, whether it is of suspicious character and would not be believed by a person of ordinary prudence. If it is sterling sound, even the evidence of single witness is sufficient to prove the guilt. In the present case the evidence of Sayaji Deshmukh is sterling sound and is free from any infirmity. The incident took place in commercial locality and near a Cold Drink House. Therefore, there must have been sufficient light for making the persons visible. The way in which the incident has taken place has to be seen carefully. It is the evidence of Sayaji Deshmukh that he saw the present appellant and his associate both holding the weapons in their hands and terrorizing the members of public and when he went towards them, both of them attacked him. Therefore, in the midst of said visibility and proximity of the assailants there is no possibility of Sayaji Deshmukh committing any sort of mistake in identifying the assailants. Besides that, both of them were well known to him. When victim and assailant or assailants are well acquainted with each other, victim can identify the assailant in dim light or even twilight. But in such cases as a matter of assurance independent corroboration would be required. Being so, his identification of the appellant as his assailant cannot be doubted at all. The prosecution is exonerating its obligation of proving the guilty of the accused beyond reasonable doubt by the evidence of Sayaji Deshmukh by itself.

8. In addition to that the evidence of Sayaji Deshmukh has been well corroborated by the evidence of Ibrahim Shaikh. There is nothing on record to show that Ibrahim Shaikh has any axe to grind against the appellant. When it is so, why he should speak falsehood against him and implicate him falsely in serious offences. The answer from all corners would be "no" unequivocally. In addition to that the evidence of Gabaji Dabhade, P.S.I. and panch witness

Jagannath Ramchandra, shows that the appellant volunteered to make a statement that he would lead them to a spot where a Gupti was concealed. Thereafter he led both of them to a cloth shops which was belonging to one Kayyum and from the shop he took out a gupti from below the roof made of corrugated iron-sheets. A gupti was discovered to have been concealed there. Said Gupti has been seized by the investigating agency under panchanama as Article No. 3 and the chemical analyser did find presence of human blood on it. The seizure of said gupti from the spot and the fact that it was stained with human blood corroborates the evidence of Sayaji Deshmukh. The prosecution has proved that appellant was knowing that such human blood stained "Gupti" is concealed under the roof. It is an incriminating circumstance.

9. The evidence of Sayaji Deshmukh has been further corroborated by the evidence of Dr. Kamath who did notice a corresponding injury on the chest of victim Sayaji Deshmukh when he was medically treated and examined. The fact that the blood stained clothes were seized from the person of Sayaji Deshmukh also adds corroboration to his evidence.

10. The evidence of Sayaji Deshmukh coupled with other corroborative evidence leaves no doubt for coming to the conclusion that the appellant assaulted victim by mini sword-gupti on the date and time as mentioned above. All this evidence has also not been at all shattered in the cross-examination.

11. The learned trial Judge has rightly appreciated the evidence on record and has rightly concluded that the guilt of the appellant has been proved beyond reasonable doubt on the points mentioned in the charge framed against him in the said trial. Thus this Court has no hesitation in coming to the conclusion that the order of conviction and sentence passed against the appellant by the learned trial Judge is correct, proper and legal.

12. It is to be noted that the injury was caused on the left flank of chest of victim Sayaji Deshmukh. The injury was sufficiently deep and it would have penetrated the heart also. By grace of God it did not so happen and as Sayaji Deshmukh received medical aid quickly and fortunately he survived. If the weapon used is seen and the injury inflicted is seen there cannot be any doubt that Sayaji Deshmukh would have died as a result of the said injury which was caused by the appellant, and in that case the appellant would have been convicted for an offence of murder punishable u/s 302 of Indian Penal Code. Therefore, the learned trial Judge was right in coming to the conclusion that the appellant had committed the crime which happens to be punishable u/s 307 of Indian Penal Code. The victim Sayaji Deshmukh was on duty as a public servant on that day and time. The injury was of course a grievous one, because by itself it was dangerous and would have endangered the life of human being. He sustained the injury when he was discharging his duty. It fulfills the ingredients of provision of Section 320 of I.P.C. Thus, the order of conviction recorded against the appellant for offence punishable u/s 333 is also correct and legal. P.W. Sayaji Deshmukh had gone ahead for apprehending the appellant and his associate but they had

obstructed him and therefore, the learned trial Judge was also right in holding him guilty of offence punishable u/s 224 of I.P.C. The appellant was holding deadly weapons in his hand like Gupti, when there was a prohibition order in existence banning for possessing such weapon at a public place, issued in public gazette. Thus, the learned Judge was right in convicting the appellant for offence under provisions of Section 4 r/w Section 25 of Arms Act and 37(i) r/w Section 135 of Bombay Police Act.

13. The offences committed by the appellant are serious in nature. His antecedents are also to be considered. Considering the submissions of appellant's Counsel for reduction in the sentence, there is no need of reducing the sentence. Thus, this Court comes to a conclusion that the order of conviction and sentence passed by the trial Court is correct, proper and legal. Therefore, this appeal deserves to be dismissed. The appeals stands dismissed. The appellant should undergo the sentence inflicted on him in appropriate prison.

The parties are directed to act upon the copy of this order duly authenticated by the Sheristadar of this Court.