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**(2010) 07 BOM CK 0041**  
**In the Bombay High Court**  
**Case No : Criminal Appeal No. 1511 of 2004**

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|---------------------------------|----|------------|
| Shankar @ Satyanna Malayya Gopi | Vs | APPELLANT  |
| The State of Maharashtra        |    | RESPONDENT |

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**Date of Decision :** 12-07-2010

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 307, 34

**Citation :** (2010) 07 BOM CK 0041

**Hon'ble Judges :** J.H. Bhatia, J

**Bench :** Single Bench

**Advocate :** None, for the Appellant; S.V. Gajare, APP, for the Respondent

**Final Decision :** Dismissed

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## Judgement

J.H. Bhatia, J.—The appellant original accused No. 1 preferred this appeal and challenged the judgment and order passed by the learned Additional Sessions Judge, Greater Bombay in Session Case No. 780 of 2002, whereby the appellant was convicted for the offence punishable u/s 307 Indian Penal Code and sentenced to undergo RI for 7 years and fine of Rs. 1,000/-.

2. At the outset it may be stated that one Mr. R.C. Makhija, advocate was appointed to conduct the appeal on behalf of the appellants, but he did not turn up when the matter came up for final hearing.

3. The learned APP makes statement on instructions from the Superintendent, Nasik Road Jail that the appellant has already undergone the complete sentence and has been released from the jail.

4. Heard learned APP. Perused record and proceeding of the Trial Court, evidence led by the prosecution and the impugned judgment.

5. P.W.1 Mallesh is native of Takalapaili, Taluka: Jagtiyal, District: Karimnagar, Andhra Pradesh and for about five years prior to this incident, he had come to Mumbai and was residing in Vazira Naka Zopadpatti, Borivali (W), Mumbai. The

accused Shankar @ Satyanna Malayya Gopi was his friend as previously they had resided together. As per the report lodged by P.W-1, Mallesh with the police on 5.2.2002, about one year before the incident, the accused No. 1 had told the PW-1 Mallesh that he was knowing one person who used to send people to Dubai for jobs with handsome salary. P.W1 Mallesh was also interested in going to Dubai and he told the accused No. 1 accordingly. The accused No. 1 told the PW1 Mallesh that an amount of Rs. 55,000/- would be required for sending him to Dubai. Initially PW-1 paid an amount of Rs. 5,000/- and also gave him pass-port. After about two months, he paid Rs. 10,000/- to accused No. 1. About 25 days after that the accused No. 1 demanded further amount of Rs. 20,000/- which was paid by the PW1 Mallesh after arranging the same from his mother-in-law. After having received the aforesaid amount of Rs. 35,000/- accused No. 1 Shankar stopped meeting PW-1 Mallesh. He also did not make any arrangement to send PW-1 to Dubai and therefore, PW1 Mallesh began to demand the said money from accused No. 1. But every time he gave evasive replies. On 10.1.2002, PW-1 Mallesh met the accused No. 1 at the corner of 11th Kamathipura Lane, where he demanded the money. The accused No. 1 told him that the agent will be available next morning. He assured that the amount would be paid to PW-1 next morning. That night the accused No. 1 purchased a bottle of liquor and PW-1, the accused No. 1 and his friend accused No. 2 drank the liquor. Then the accused Nos 1 & 2 forced PW-1 Mallesh to accompany them in a taxi and after reaching at one Bridge, the accused No. 1 asked PW-1 as to what amount he was asking for and that he should forget that amount. After that again they drank some liquor and came in BIT Chawl and sat on one cement bench on the foot-path. At that place PW-1 Mallesh again asked about the money and therefore, the accused No. 1 got annoyed, he broke the glass bottle on the bench and assaulted on the neck of PW-1 Mallesh and caused bleeding injuries. PW-1 became unconscious. When he regained consciousness, he found himself in Nair Hospital. It was revealed that he was found in injured condition on the foot path on Keshavrao Kadam Marg, near BIT Chawl No. 9 from where he was taken to Nair Hospital. He was examined and given certain treatment at Nair Hospital. Later on for better treatment he was shifted to ENT Hospital because of serious injuries and pipe was inserted into his mouth and throat, he was unable to speak. He got discharged from the hospital on 2.2.2002 and on 5.2.2002, his report was recorded.

6. Meanwhile on 11.1.2002, police recorded spot panchnama and seized broken pieces of glass and dry blood stains from the spot under panchnama. Then the telephone Number of his wife was collected and she was called. The police searched for accused Nos. 1 and 2 and arrested both the accused. The clothes of PW-1 were referred to CA. After investigation the police filed chargesheet against both the accused u/s 307 r/w 34 Indian Penal Code.

7. The learned Additional Sessions Judge framed the charge u/s 307 r/w 34 IPC against both the accused. The accused pleaded not guilty.

8. After hearing, learned Trial Court convicted the accused No. 1 and sentenced him as stated above. The accused No. 2 was acquitted.

9. On behalf of prosecution 7 witnesses were examined and some documents were also produced. PW-1 Mallesh deposed as per prosecution story. He was cross examined at length. But his evidence could not be shattered. The evidence reveal that he was found in unconscious condition and police shifted him from spot of incident to Nair Hospital.

10. The evidence of PW-5 Dr. Jayamurugan S. Sundaram, reveals that he was attached to Nair Hospital as R.M.O on 10.1.2002. One Malesh M. Saina was brought to Hospital at 11.20 pm. He examined injured and found following injuries.

Extensive cut throat incised wound at the anterior and upper aspect of the neck. Muscles were exposed; larynx exposed; active bleeding was there.

According to him after the initial examination, ENT specialist of the hospital also examined and advised to refer him to ENT hospital for better treatment, as the condition of the patient was serious and the injury was sufficient to cause death. He produced the hospital papers which are marked as Exh-14 colly. The evidence of PW-6, Dr. Sameer Abdulkadir Lambay, shows that on 11.1.2002 when he was on duty at ENT Hospital, one Malesh Sayanna was transferred to ENT hospital from Nair Hospital for better treatment. He also examined the patient and found the following injuries:

Incised wound cut injury on thyroid cartilage lower 1/3, Posterior wall of larynx intact. Major vessel intact.

Sternocleidomastoid muscle intact. Strap muscle cut.

He opined that the injury was grievous and it could be caused with broken piece of glass sharp edged weapon if sufficient force was applied. He also opined that if the patient would not have been given good and prompt treatment, patient would have died. The patient was discharged from the hospital on 12.2.2002. He issued medical certificate exhibit 16. The medical evidence also reveals that the patient was not in a position to speak. He issued certificate dated 23.1.2002 at 1.00 pm mentioning that the patient was unable to speak and accordingly endorsement made on exh. 16. On 2.2.2002, another Dr. Damayanti Page, had certified that the patient could speak with efforts by putting finger on tracheotomy tube and he was sent back to Nair Hospital.

11. The evidence of both the Doctors and the case papers from both the Hospitals reveal that P.W.1 Mallesh was unable to speak and was admitted in hospital for a period from 11.1.2002 to 2.2.2002. This explains the delay in lodging report. Though the incident had occurred in night of 10.1.2002. Due to the injury he had fallen unconscious on the spot from where he was taken to the hospital. He was unable to speak till 2.2.2002. PW-1 Mallesh deposed that after discharge, his statement was recorded after calling him from his house. The FIR

is at exhibit.7.

12. It appears that much of investigation was done by Mr. Gaikwad, PSI, but does not appear to have been examined. P.W. 7, ACP, Gore has been examined and he tried to prove the documents about the investigation carried out by PSI Gaikwad. It is difficult to find any reason why PSI Gaikwad was not examined. Anyhow the evidence of P.W.3 Taslimkhan, who was punch witness has been recorded. He stated that on 11.1.2002 at 1.00 am, spot panchnama was prepared by the police at Keshavrao Kadam Nagar, Bombay Central. The blood stains were found on the cement bench and by the side of the cement bench there were broken glass pieces. On one of such glass piece, there were blood stains and yellow colour sleeper was found lying there. All these articles were seized under panchnama at exh.10. He identified the sleeper which is marked as article No. 1. The pieces of glass are marked as Article No. 2. The evidence of P.W-7 ACP - Gore, reveals that clothes of accused No. 1 were attached and seized under panchnama which is at Exh.21. Muddemal Property was sent to CA alongwith covering letter exh.24. Exhibit Nos 27 to 31 are the CA reports. CA report at exh.27 reveals that on broken piece of glass Exh.3 and full pant exh.4 human blood stains were found but the blood group could not be determined.

13. The evidence of P.W.1 could not be shattered. Nothing has come on record due to which his evidence could be disbelieved. It is corroborated not only by medical evidence but also by seizure of the broken pieces of glass and the blood stains found on the bench at the spot of incident. Thus, the prosecution has clearly established that the accused No. 1 had assaulted the injured Mallesh with broken bottle of glass on his neck and had caused serious bleeding injuries. In view of the fact that on vital part of the body on which he had attacked, it could be gathered that he had an intention to cause death or to cause such injury which would be sufficient to cause death. Had he died because of the said injury, the accused could be convicted for the offence of murder. Therefore, the accused is liable to be convicted for the offence punishable u/s 307 IPC. Taking into consideration the manner in which the accused No. 1 had assaulted P.W.1 Mallesh on the isolated place, in my considered opinion, the sentence awarded by the Trial Court was justified and needs no interference.

14. For the aforesaid reasons, the appeal stands dismissed.