Premachand S. Bansode and anr. Vs. State of Maharashtra

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Court : Mumbai

Decided On : Aug-23-2006

Reported in : 2007CriLJ142

Judge : V.R. Kingaonkar, J.

Acts : Indian Penal Code (IPC), 1860 - Sections 34, 147, 148, 149, 302, 307, 325 and 326

Appeal No. : Cri. Appeal No. 245 of 1995

Appellant : Premachand S. Bansode and anr.

Respondent : State of Maharashtra

Advocate for Def. : Umakant Patil, APP

Advocate for Pet/Ap. : A.H. Kapadia, Adv. for ;H.F. Pawar, Adv.

Judgement :

V.R. Kingaonkar, J.

1. Aggrieved by their conviction and sentence for offence punishable under Section 307, r.w. Section 34 of the I.P. Code in Sessions Case No. 95/1992, the original accused Nos. 1 and 2 have come up in appeal. By the impugned order, the learned Addl. Sessions Judge, Osmanabad, convicted both the appellants for

offence punishable under Section 307, r.w. Section 34 of the I.P. Code and sentenced them to suffer rigorous imprisonment for four (4) years and to pay a fine of Rs. 2000/- each, I.D., to suffer rigorous imprisonment for six (6) months.

2. The prosecution case, stated briefly, is that on December 12, 1991, PW1 Satish Tanaji Bansode (complainant) went to an eatery styled as 'Cafe Gullstan' which is also known as 'Islamic Khanawal' (Islamic inn) situated near the S. T. Bus stand at Osmanabad. It was around midday that he ordered a dish of Biryani for the lunch. He was eating the food when in all seven (7) persons, Including the present appellants, entered the premises of the eatery. They were armed with a knife, iron rod and sticks. Immediately they mounted assaulted on him by means of the knife, iron rod and the sticks. He received bleeding Injury on the head, various other bleeding injuries on his person and darted out of the premises of the eatery. He hired a rickshaw and went to the police station. He was referred to undergo medical examination and treatment at the Civil Hospital, Osmanabad. His oral report was reduced into writing after arrival of his father, who happens to be a retired police head constable and further investigation was geared up.

3. The police got seized blood stained shirt and clothes of the injured PW Satish under a seizure panchanama drawn at the police station. Thereafter, a spot panchanama at place of the eatery i.e. 'Cafe Gullstan' was also prepared. An iron-rod smeared with some blood stains was found in the premises of the eatery and was seized while preparing the spot panchanama. Then statement of the proprietor of the eating house was recorded. The present appellants were arrested on next day i.e. 13th December, 1991. The other accused persons, who have been acquitted by the trial Court and were original accused Nos. 3 to 7, were also arrested. The Investigating Officer got the appellants medically examined on 14th December, 1991 since some minor injuries were found on their persons. The investigation disclosed that the injured - PW Satish had contested municipal election in which the appellants had indulged in canvassing for the candidate from opposite group and there was rivalry on account of earlier incident of mutual fight (Maramari). The medical evidence revealed that PW Satish had received seven (7) wounds, out of which an incised wound on the left forearm was grievous in nature since it was a fracture injury. The Investigating Officer recovered knife, iron-

rod and other articles at the behest of the appellants and other acquitted accused persons. Consequent upon the investigation, on the basis of incriminating material collected during its course, in all seven (7) accused persons came to be charge-sheeted. They were tried together for offences punishable under Sections 307, 147, 148 r.w. Section 149 of the I.P. Code.

4. A common charge was framed at Exh. 13. The appellants along with acquitted persons entered plea of 'not guilty'. Their defence was one of total denial. No specific defence was raised during the trial and the appellants as well as other accused persons simply offered denial to the accusations and correctness of the case of prosecution.

5. In the course of trial, in all fourteen (14) witnesses were examined in order to prove the case put forth by the prosecution. The learned Addl. Sessions Judge relied upon the version of PW Satish regarding the Incident of assault in so far as the appellants are concerned. The learned Addl. Sessions Judge did not, however, rely upon the evidence of the prosecution in so far as the original accused Nos. 3 to 7 are concerned. Hence, they all were acquitted whereas, the appellants came to be convicted and sentenced as stated at the outset.

6. The learned Counsel Shri Kapadia appearing for the appellants canvassed before me that the learned Addl. Sessions Judge has committed an error in appreciating the evidence of PW Satish and other witnesses. He contended that the testimony of PW Satish could not be relied upon for various reasons, including the fact that he did not disclose the incident immediately to the police officer and awaited till arrival of his father. He further contended that the appellants could not have nurtured any motive to mount assault on PW Satish, particularly, in the relevant noon. He further pointed out that there is no independent corroboration to version of PW Satish. According to the learned Counsel Shri Kapadia, very insignificant injuries found on the person of the appellants were given undue Importance by the learned trial Court which in fact, could not have been attributed to any scuffle or participation by them in the course of alleged assault. The learned Counsel further submitted that the F. I. R. (Exh. 24) does not specifically describe role of either of the appellants and, as such, it may be inferred that PW Satish has

later on improvised the story to falsely implicate them. The learned Counsel further submitted that the recoveries of knife and other articles are not proved at all. He took me through the evidence on record and pointed out that the Radiologist was not examined by the prosecution. At any rate, the conviction for offence punishable under Section 307 r. w. Section 34 of the I. P. Code could not have been arrived at on basis of the evidence produced by the prosecution, the learned Counsel Shri Kapadia submits. He urged, therefore, to allow the appeal and set aside the Impugned order of conviction and sentence. On the other hand, the learned A.P. P. Shri Umakant Patil has supported the impugned order of conviction and sentence. He submitted that the immediate conduct of PW Satish in giving report to the police and the fact that proprietor of the eatery has partly corroborated the case of the prosecution, would be sufficient to prove the charge. Hence, he urged to dismiss the appeal.

7. Before I proceed to scrutinize the prosecution evidence, let it be noted that the injured - PW Satish had contested municipal election from a ward of Osmanabad town before the alleged incident. His opponent was declared elected and he was defeated in that election. The appellants did not support him and canvassed for the candidate from the opposite group. It has come on record that there was some earlier incident in which the appellants were assaulted. A criminal case was also instituted by them against PW Satish but, that offence was compounded. Needless to say, PW Satish and both the appellants were at loggerheads. There was political rivalry and grudge nurtured against each other. It is in this backdrop that the prosecution evidence will have to be scrutinized with more care and caution. The acquittal of original accused Nos. 3 to 7 is not challenged by the prosecution and hence it is not necessary to consider the evidence against them or the question of their involvement in the commission of the alleged offence.

8. The fact that PW Satish was injured during course of the Incident which occurred in the relevant noon has been duly corroborated by PW 4 Sherkhan. He is an independent witness and has absolutely no reason, whatsoever to speak lie about the nature of the Incident. He may have his own reservations regarding identity of the culprits. His version purports to show that on 12th December, 1991 PW Satish visited his eatery at about 12 noon. His version further purports to show

that PW Satish called for a dish of Biryani. According to PW Sherkhan, around six-seven other customers entered his hotel. His version purports to show that when he had gone inside the kitchen of the eatery, to arrange service of food ordered by those customers, he heard commotion from outside and when came out of the kitchen, he had seen six-seven persons while they were beating PW Satish. His version purports to show that PW Satish had received bleeding head Injury. He described the clothes put on by the PW Satish at the relevant time and identified them as articles No. 2 and 3. Obviously, he had clearly noticed that PW Satish had put on a lemon colour shirt (article 2) and a black pant (article 3) at the relevant time. He deposed, however, that he does not know any of the accused and could not identify either of the assailants.

9. Though PW Sherkhan was declared hostile and was subjected to cross-examination by the learned A. P. P., yet nothing of significance could be gathered in so far as identity of the assailants is concerned. It is worthwhile to note that PW Sherkhan was not cross-examined at all by the defence. His version to the extent of the incident in question has remained unshattered, unchallenged and Intact. There is no reason, whatsoever, to dislodge his version regarding the incident in question. Needless to say, PW Satish stands well corroborated by version of PW Sherkhan as regards the incident of assault.

10. I may proceed now to scrutinize the version of PW Satish in so far as the identification of the assailants is concerned. If his version is found credible, then the prosecution case may be relied upon to the extent of the manner of the assault caused by the appellants. The statement of PW Sherkhan is discussed earlier only because the learned Counsel Shri Kapadia disputed the veracity regarding the incident and the place of occurrence. The learned Counsel Shri Kapadia invited my attention to spot panchanama (Exh. 33) and pointed out that the incident could not have occurred in the premises of the eatery inasmuch as, no trace of blood was found on the floor nor any sign regarding the scuffle or damage caused to the premises was noticed. The spot of the incident is, however, manifestly clear from the version of PW Sherkhan and as such, omission of blood stains on the floor of the eatery is of no much consequence. Moreover, the version of PW Sherkhan reveals that the injured - PW Satish had sustained bleeding head injury. The

medical evidence shows that all the injuries were of simple nature except one fracture of left ulna. It is quite probable that the trial of blood was soaked by the cloth of the shirt and did not come down to the earth. I mean to say, mere omission to locate any stain of blood on the floor of the spot of the incident is not so much so material and cannot be a foundation to show that the incident did not occur at that place.

Wednesday, 23-8-2006.

(Cont.)

11. So far as the version of PW Satish is concerned, it is explicit that he sustained multiple injuries during course of the alleged incident. His version purports to show that while he was taking the lunch in the eatery, all the seven accused persons entered the premises, encircled him and mounted assault. He categorically states that appellant No. 1 was armed with knife and appellant No. 2 was armed with an iron-rod. He also mentioned about the weapons used by the other acquitted accused persons. His version reveals that he received various bleeding injuries and immediately came out of the eatery, hired a rickshaw and rushed to the police station. His version reveals further that his shirt (article No. 2) was stained with blood. He was referred to Civil Hospital, Osmanabad, immediately and later on his report was reduced into writing (Exh. 24). He corroborated recitals of the report. His version purports to show that the assault was outcome of the grudge on account of his filling up form for the municipal election.

12. Cross-examination of PW Satish reveals that there are some other hotels and Paan Stalls around the eatery. He admits that the eatery is by side of State Highway and the road is usually of busy traffic. He further admits that he did not give report prior to arrival of his father, who happens to be a retired Police Head Constable. He further states that the report (Exh. 24) was recorded around 1.30 p.m. His family members were present when the report was recorded by the police. His additional police statement was recorded and a contradiction is brought on record to show that he had become unconscious after the assault. He denied the suggestion that he has falsely implicated the accused persons on account of enmity.

13. The learned Counsel Shri Kapadia urged to discard version of PW Satish for the reason that he was on inimical terms with the appellants. Secondly, he is not a truthful witness and somehow or the other, wanted to frame the appellants which fact can be gathered due to his conduct of giving the report (Exh. 24) only after consultation of his father and other relatives. Thirdly, it is explicit from the report (F. I. R. Exh. 24) that he did not attribute any particular role to the appellants or other acquitted accused persons. It is contended that PW Satish developed the story at subsequent point of time and his earlier omnibus statement could not have been accepted by the Court below.

14. In support of his contention, learned Counsel Shri Kapadia seeks to rely upon certain observations in case of Ajit Bhimrao Mali v. State of Maharashtra 1998 All MR 455. It is observed by learned single Judge of this Court that conviction cannot be founded on omnibus statements of witnesses and there must be cogent, consistent evidence about specific acts of accused persons. Similarly, reliance is placed on The State of Maharashtra v. Shivaji 1997 (3) All MR 332 in which it has been observed that it is not proper on the part of the Courts to ipso facto accept the evidence of an injured witness. It is observed that Courts would do well to remember that injuries only at the best guarantee the presence of a witness; they do not ensure the credibility or truthfulness of a witness : and even in the case of an injured witness, no Court ever convicts unless it is satisfied that the said injured witness is a truthful witness on aspects which constitute the core of the prosecution case.

15. The above authorities cited by learned Counsel Shri Kapadia deal with the subject pertaining to appreciation of evidence. There are cases and cases. Each case depends on the weight of evidence adduced in matter. With due respect, these authorities cannot be regarded as precedents so as to evaluate the evidence of PW Satish in the present matter. If need be, the proposition may be further clarified with the help of observations in the case of Hazari Lal v. The State (Delhi Admn.) : 1980 CriLJ564 . The Apex Court has observed (Para 8):

In the facts and circumstances of a particular case a Court may be disinclined to act upon the evidence of such an officer without corroboration, but, equally, in the

facts and circumstances of another case, the Court may unhesitatingly accept the evidence of such an officer. It is all a matter of appreciation of evidence and on such matters there can be no hard and fast rule, nor can there be any precedential guidance. We are forced to say this because of late we have come across several judgments of Court of Session and sometimes even of High Courts where reference is made to decisions of this Court on matters of appreciation or evidence and decisions of pure question of fact.

16. Needless to say, the Apex Court itself has disapproved the utility of case law on question of appreciation of evidence as a precedent. Still, however, it may be used as guideline if parallels can be found. How I wish, the practice of giving various citations on question of appreciation of evidence should be avoided.

17. The animosity of the appellants is stated by PW Satish and there is no denial to it. At the relevant time, he had no serious reason to ventilate his grudge against the appellants by making false allegation. He was unarmed and was engaged in taking food in the eatery. Though the F. I. R. (Exh. 24) does not show the manner in which each of the assailants mounted assault and the particular role attributed to each of them yet this cannot be a sufficient reason to dislodge version of PW Satish. It is well settled that F. I. R. is not a compendium of all the events and all particulars need not be stated in the same. The F.I.R. is basically recorded for taking cognizance of offence and commencement of the investigation, if any, or an enquiry, as the case may be. The omnibus statement in the F. I. R. cannot be used as exculpatory material in support of the defence. It is true that PW Satish lodged the F. I. R. (Exh. 24) after arrival of his father. His father is a retired police head constable but, that cannot be regarded as a material reason to infer that the report was fabricated. Indeed, there was no enmity between father of PW Satish and the appellants. Being a retired Head Constable, it was unlikely that he would be in a position to exercise any undue influence on the Investigating Officer. Had there been prior consultation to falsely implicate the appellants and for that matter the other accused persons too, then the experienced Head Constable would have perhaps attributed role to each of them. There is nothing unnatural in the manner of recording report which was immediately recorded within about one hour after the incident of assault. The promptitude speaks against falsity and not in favour of

the falsity regarding contents of the F. I. R. (Exh. 24).

18. The sequence of events could not be overlooked. PW Satish was first sent for medical examination. The medical evidence purports to show that he had received in all eight (8) injuries. The version of P. W. 2 Dr. Raj mane reveals that PW Satish was examined at about 1 P. M. on the same day. The incident occurred at about 12/12.30 P. M. and the injured PW Satish was examined at about 1 P. M. The F. I. R. (Exh. 24) was registered at about 1,30 P. M. The successive chain of events would indicate that there was hardly any time gap available for concoction of allegations against the appellants. The evidence of P. W. 2 Dr. Rajmane purports to show that following incised wounds were found on the person of PW Satish:

(1) Incised wound 4 x 1/2 x 1/2 cm. on left side of face.

(2) Incised wound 2 x 1/2 x 1/2 cm. on left eyebrow.

(3) Incised wound 2 x 1/2 x 1/2 cm. on left forearm.

(4) Incised wound 3 x 1/2 x 1/2 cm. on left wrist on posterior aspect.

(5) Incised wound 2 x 1/2 x 1/2 cm. on frontal parietal region of scalp.

(6) Incised wound 3 x 1/2 x 1/2 cm. on left parietal region.

(7) Incised wound 3 x 1/2 x 1/2 cm. on both parietal occipital region of scalp.

Besides, one more injury i.e. injury No. 8 was thus:

(8) Contusion 16 x 9 cm. on left thigh.

19. P. W. 2 Dr. Rajmane states that Injury No. 3 i.e. incised wound of 4 x 1/2 x 1/2 cms. on left forearm was grievous in nature. He also produced X-ray plates and stated that the said injury disclosed fracture of ulna. The X-ray plate (Exh. 27) was not proved by the radiologist but it is also of no much significance, for, during course of cross-examination of P. W. 2 Dr. Rajmane, there is hardly anything elicited to dislodge his opinion about the nature of the said in-Jury. Nor it is suggested by the defence that Injury No. 3 was of simple nature. The version of P.

W. 2 Dr. Rajmane purports to show that the first seven (7) injuries were caused by sharp objects whereas Injury No. 8 was caused by some hard and blunt object. He corroborated the medical certificate (Exh. 26). His version also corroborates PW Satish regarding recording of the F. I. R. (Exh. 24) in the Civil Hospital. He admits that the injuries could be possible in the event of a scuffle between two groups of persons. Such admission is of no avail when there is no such possibility brought on record and PW Satish was alone in the eatery at the relevant time. In the absence of any material gathered during cross-examination of P. W. 2 Dr. Rajmane, I find it difficult to discard the medical evidence.

20. From the medical evidence of P. W. 2 Dr. Rajmane, it is amply clear that PW Satish was injured in the relevant noon, was medically examined immediately about within 30-40 minutes and lodged F. I. R. (Exh. 24) within about an hour of the incident. These are tale telling facts. It is true that independent witnesses have not supported case of the prosecution. The independent eye witnesses, namely, one Raju and employee of M.S.R.T.C. were not examined. Still, however, it would not materially affect case of the prosecution unless the version of PW Satish is found to be palpably unreliable and unacceptable.

21. As stated before, PW Sherkhan, whose presence on the spot is but natural, partly corroborated case of the prosecution. His unimpeached version corroborates part of the testimony of PW Satish in respect of incident of assault. The only omission made by PW Sherkhan is regarding identity of the assailants. There cannot be duality of opinion that, normally, people are disinterested in entering the arena of private disputes. Some times, the witnesses avoid their involvement in the private disputes. It is stated by PW sherkhan that he does not know the accused persons. This part of his statement would indicate his reluctance inasmuch as, it is unlikely that he does not know them although, they are from the same town, which is a small place, and when the inhabitants are frequently required to visit S. T. Bus Stand.

22. All said and done, I find it difficult to reject version of PW Sherkhan only because a part of his evidence is not favourable to the prosecution and that he did not name either of the assailant. The maxim 'falsus in uno, falsus in omnibus' has

no application in India and the witness cannot be branded as liar. The Apex Court in case of Israr v. State of U.P. : AIR 2005 SC249 , has observed that even if major portion of evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, notwithstanding acquittal of number of other co-accused persons, his conviction can be maintained. It is the duty of court to separate grain from chaff. Where chaff can be separated from grain, it would be open to the Court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons. Falsity of particular material witness or material particular would not ruin it from the beginning to end. The Apex Court further held that maxim 'falsus in uno, falsus in omnibus' has no application in India. In view of this settled legal position. I am inclined to accept the testimony of PW Sherkhan to the extent of the manner of incident. It is proved, therefore, that PW Satish was subjected to assault in the relevant noon. A part of his statement is corroborated by PW Sherkhan and also stands corroborated by the medical evidence.

23. The material evidence of injured witness cannot be lightly brushed aside only because some political animosity was prevailing at the relevant time. Needless to say, the enmity is a double edged weapon and was used by the appellants so as to avenge upon PW Satish on account of earlier act of filing his nomination form so as to contest the municipal election.

24. Though the learned trial Court appears to have further relied upon version of P. W. 3 Dr. Awad regarding minor injuries found on the person of the appellants, to show that their presence is made highly provable due to such injuries, yet such material is not much useful to infer their culpability. It cannot be ignored that they were arrested on 13th December, 1991. The evidence of P. W. 3 Dr. Awad shows that he examined them on 14-12-1991 and noticed an incised wound between thumb and index finger of appellant No. 1 Premchand and a contused lacerated wound on left little finger tip of appellant No. 2 Bapu along with minor abrasion on the same finger. He corroborated the medical certificates (Exh. 29 and Exh. 30). The F. I. R. (Exh. 24) does not show that the appellants sustained such injuries during course of the incident. Moreover, evidence of PW. 14 P. S. I. Patil reveals that no arrest panchnama was drawn. Normally, such arrest panchanama is useful

to show presence of injury on person of arrested accused. The nature of injuries would show that the same could have been caused due to any other reason and also after the arrest. The presence of the appellants cannot be ipso facto inferred on account of such minor injuries stated by P.W. 14 Dr. Awad. Still, however, I am inclined to hold that identity of both the appellants as assailants is duly proved on account of the testimony of injured PW Satish.

25. The remaining evidence need not be discussed with all the details the prosecution sought to rely upon recoveries of knife, iron rod, and other articles. The recovery panchas namely, P. W. 5 Mukaram, P. W. 7 Gopinath, P. W. 12 Gulchand and P. W. 13 Limbaji, did not support the panchanamas. They were declared hostile. Nothing of much importance could be gathered from their cross-examination. The evidence of P. W. 6 Dattatraya corroborates seizure panchnama (Exh. 35) where- under, the blood stained shirt, banyan and pant etc. of PW Satish were seized. He identified those articles (Nos. 2 to 4).

26. The prosecution also examined P. W. 8 Sugat and P. W. 9 Tanaji, who are brother and father, respectively, of the injured PW Satish. They are not the eye witnesses. P. W. 8 Sugat is proprietor of a cycle shop and states that he had seen the appellants and other accused persons while they were going towards the S. T. Stand in Cycle rickshaw. This part of his version is rather farfetched. No other independent witness is examined from area of his cycle shop to corroborate such a fact. Both the witnesses are closely related to PW Satish. I do not think that version of either of them is of any material Use to support case of the prosecution. They have stated that PW Satish had immediately disclosed the names of assailants. Their hearsay evidence should not have been recorded since it is not part of 'rest gestiae'. The learned Advocate for the defence did not raise any objection nor the learned Addl. Sessions Judge took care while recording such evidence in the Court. So, unfortunately, such hearsay evidence has come on record. The same will have to be excluded from consideration.

27. P. W. 14 P. S. I. Patil gave out details regarding the steps taken during course of the investigation. He states that the blood stained Shirt (Manila), baniyan and full pant of PW Satish along with knife and iron rod were sent to the office of the

Chemical analyzer. The report of the chemical analyser (Exh,. 57) reveals that the articles were found to bear stains of blood. The blood group was determined as group 'B'. Sample of the blood of PW Satish was also sent to the office of the Chemical Analyser. The Chemical Analyser's report (Exh. 58) shows that his blood group is 'B'. Thus, the blood Stained clothes of PW Satish were found to bear the blood of his own group and it can be inferred that he had put on those apparels on his person at the time of the incident. To concludes. I am in general agreement with the reasons recorded by the learned Addl. Sessions Judge and hold both the appellants had assaulted the injured PW Satish in the relevant noon.

28. At this juncture, it may be mentioned that learned Counsel Shri Kapadia further submitted that the offence proved against the appellants is not covered by provisions of Section 307 of the I. P. Code. He pointed out that P. W. 2 Dr. Rajmane did not express any opinion as regards sufficiency of the injuries to cause death in the ordinary course. In fact, P. W. 2 Dr. Rajmane admits unequivocally that he was unable to say as to whether the injuries, in the ordinary course, were sufficient to cause death of the patient (PW Satish). In spite of such admission, the learned trial Court has wrongly inferred that the injuries could have caused the death if PW Satish would not have been medically treated at the earliest. There appears patent error committed by the learned trial Court in this behalf. The learned trial Judge has observed:

Now, from the nature of injuries and fact that most of them were on vital part of body like face, eye brow and scalp, I am of the opinion that the intention of accused 1 and 2 in assaulting on Satish can be nothing short but to attempt to commit his murder and hence, these two accused are liable to be convicted of the offence punishable under Section 307 r/w. Section 34 of Indian Penal Code. I, therefore, answer the point 4 accordingly.

29. True, multiple injuries were found on person of PW Satish yet, it is not established that the injuries were caused with an intention to do away with his life. The assault was not preceded by any threat to cause his death. It is difficult to say that the act of the appellants come within ambit of Section 307 of the I. P. Code. The learned trial Court inferred such intention of the appellants only because there

were large number of injuries found on the person of PW Satish. They had gone together at the place of incident and were armed with knife and dangerous weapons like iron rod etc. This conduct of the appellants would show that they had planned to mount assault on PW Satish. Had they intended to cause death of PW Satish, in the ordinary course of events, there was no reason to stop after inflicting simple injuries. There was a single incised wound on the scalp of PW Satish. He went to police station on his own. The learned trial Court has observed that the injuries were on vital part of the body like face, eye brow and scalp. I do not agree. The medical evidence does not support case of the prosecution that PW Satish could have lost his life as a result of the said injuries, in the ordinary course, but for availability of immediate medical treatment.

30. In the context, learned Counsel Shri Kapadia invited my attention to case of Lalit, @ Lallu V. Shaha v. State of Maharashtra 2000 (Supp.) Bom C.R. 138 and Rattan Singh and Ran Singh and Anr. v. State of Punjab : 1989 CriLJ287 . The Apex Court was pleased to convert sentence for offence punishable under Section 302 I. P. Code to one under Sections 325 and 326 of I. P. Code in view of the nature of injuries found on the person of the injured and for the reason that the assailants were carrying lathis, which could be described as hard and blunt objects.

31. Considering nature of injuries, I am inclined to accept the contention of learned Counsel Shri Kapadia and hold that the intention to cause death of PW Satish is not proved by the prosecution. Therefore, conviction for offence under Section 307 r.w. Section 34 of I. P. Code is improper and liable to be set aside.

32. The appellants are brothers inter se. Their identity as assailants is duly established. The nature of injuries found on person of PW Satish would go to show that he had sustained one grievous injury. The learned Counsel Shri Kapadia pointed out that the version of PW Satish does not specify authorship of the grievous injury and argued that the appellants cannot be held responsible for such injury. I do not agree. When the assault was mounted, without any provocation and altercation, it is but natural that PW Satish was taken aback. His failure to describe role of each assailant, in fact, cannot be viewed seriously. The incident

occurred all of a sudden and at spur of moment. Under the circumstances, I am of the opinion that the appellants caused simple ; as well as grievous hurt to PW Satish by means of dangerous weapons like knife and iron-rod. Both of them are, therefore, guilty for offence punishable under Section 326 r.w. S.34 of the I. P. Code.

33. In the result, the appeal partly succeeds. The impugned order of conviction and sentence for offence punishable under Section 307 r. w. Section 34 of the I. P. Code is set aside. Instead, both the appellants are convicted for offence punishable under Section 326 r. w- Section 34 of the I. P. Code and sentenced to suffer R. I. for one (1) year each and to pay a fine of Rs. 5000/- each, I. D., to suffer R. I. for six (6) months. The appellants would be entitled to the set off as directed by the learned Addl. Sessions Judge.

The remaining part of the impugned order, regarding disposal of the property articles is maintained. The appellants shall surrender to bail within four weeks from receipt of the writ of this order, which shall be sent within one week from today. The office shall report compliance about sending of the writ within one week.