

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.: - 000 OF 0000

KBB AND ORS APPELLANT

VERSUS

THE STATE OF MAHARASHTRA RESPONDENT

SYNOPSIS OF ARGUMENT ON BEHALF OF PROSECTUION

: INCIDENT :

On 1/11/0000 the Informant MK, PW 1 and injured VG, PW 2 were returning back to their village XXX and at about 6 to 6:15 p.m. they reached near slope of village XXX at that time the accused came towards the PW 1 and PW 2 and started assaulting PW 2. The PW 1 Informant, requested them not assault PW 2, however accused did not listen the same. Since the PW 2 was assaulted by the accused, the mother and brother (PW3) of PW 2 rushed to the spot. The accused left the spot and on their way the accused also assaulted the mother and brother of the injured PW 2 and informed them that their tiger (PW2) has fallen.

The PW 1 and relatives of PW 2 took PW 2 village Bridge on a Cot and from village bridge took the PW 2 to Reti Bunder Police Out Post in a Jeep and from said Police Out Post took the PW 2 injured VG to XXX Municipal Hospital at about 7:45 p.m. where he was given initial treatment and from XXX PW 2 was shifted to Sion Hospital.

The PW 1 Informant thereafter went to Police Station at about 8:45 p.m. and on the basis of his complaint offence was registered vide C. R. No. 222/0000 at 9:00 p.m.

: ADMITTED FACTS BY DEFENSE :

From the evidence on record it could be seen that the following facts / documents have been admitted by the accused.

- 1) In village XXX, Tal. XXX, Dist. XXXX there are two rival groups. There is enmity against both groups i.e. belonging to Informant and that of accused. (Cross Exam. of PW 1 page 221 para 6)
- 2) The PW 2 VG was assaulted and his family members reached to the spot. (Cross Exam. of PW 1 page 223 para 9 Line 23)
- 3) The Place of incident is also not disputed (Cross Exam. of PW 1 page 223 para 9 & Exh. 53) (The particular given by PW 1 in Cross on the basis of said photograph are in consonance with the spot panchnama Ex.40)

Documents admitted in response to notice u/s. 294 of Cr.P.C.

- 4) Panchnama of Scene of offence dated 2/11/0000 **Exh. 39 Page 187**
- 5) Panchanama of attachment of clothes of PW 2 - Injured VG, (2/11/0000) produced by Mrs. PG, the wife of accused **Exh. 40 Page 189**
- 6) Panchanama of attachment of clothes of PW 2 - Injured VG, (2/11/0000) produced by PC Shelar, who had taken injured to Sion Hospital. **Exh. 41 Page 191**
- 7) Panchnama of Arrest of all the accused dated 16/11/0000 and seizure of clothes from the person of accused. **Exh. 42 Page 193**
- 8) Medical Certificate of PW 2 – VG issued by M. O. XXX is the copy of the said Municipal Dispensary **Exh. 45 Page 197**

- 9) Medical Certificate of GG issued by M. O. XXX Municipal Dispensary
Exh. 46 Page 198
- 10) Medical Certificate of AG, PW 3 - issued by M. O. XXX Municipal Dispensary **Exh. 47 Page 199**
- 11) Letter dated 9/12/1993 addressed by the XXX Police Station to C. A. for examination of Muddemal articles **Exh. 48 Page 200.**
- 12) The report dated 10/2/0000 given by the Chemical Analyzer **Exh. 49 Page 210.**
- 13) Medical Certificate dated 14/8/0000 of PW 2 – VG issued by Registrar, L. T. M. C. Hospital, Sion Mumbai **Exh. 50 Page 216**

: DIRECT EVIDENCE :

In order to prove charges against the accused the prosecution examined in all 6 witnesses as under :

PW's	Name	Particular	Exh.	Page
PW 1	MK	Informant / Eye Witness Proved FIR	51	217
PW 2	VG	Injured / Eye Witness	56	228
PW 3	AG	Witness	57	233
PW 4	Dr. MP	Medical Officer –XXX – Examined injured	59	236
PW 5	SP	Panch Withes – Proved Discovery by Acc. No. 1	62	241
PW 6	PS	Investigating Officer	65	247

The evidence reveals that the PW 1 (Informant) and PW 2 (Injured) were together when the incident took place and PW 3 AG, the brother of the deceased rushed to the spot along with his mother from their house, which was at a distance of 385 feet from the place of incident and the incident of

thrusting and assaulting them i.e. GG and PW 3 AG took place at a distance of 300 feet from the place of incident. The prosecution witnesses i.e. PW 1, 2 and 3 have stated about presence of 12 -13 accused at the spot; however the Ld. Trial Court has scrutinized evidence to find out corroboration.

Therefore so far as incident of actual assault on PW 2 VG is concern the evidence of PW 1 Informant and PW 2 injured himself is relevant and same is summarized below in tabular form.

Acc. No.	Accused	Roll attributed by PW 1	Roll attributed by PW 2 (VG)
1	KBB	Blow of Sword on the hand	Blow of Sword on the hand
2	VMT	Blow of Sword on the Leg	Blow of Sword on the Leg
5	BGP	Stretched Left Hand of Vilas	XXXX
13	GJP		Stretched Left Hand of Vilas
14	RGP		XXXX
8	DNP		XXXX
7	NNP	Blow of Sword	Blow of Sword
5	BGP	Blows of Axe	Blows of Sword on Left Leg
4	DPP		XXXX
13	GJP		XXXX
9	BBP		XXXX

From the evidence it could be seen that both the witnesses have concurrently attributed specific rolls to the Ori. Accused No. 1, 2, 5, 7 and 13 i.e. the Appellants before this Hon'ble Court and the roll attributed to the said Accused is also duly corroborated by the medical evidence. The Ld. Trial

Judge has therefore rightly convicted the Appellants. (Para 20 [Page 282] and 25 [Page 287] of the Judgment of Trial Court)

So far as assault on PW 2 VG is concern, apart from Accused No. 1, 2, 5, 7 and 13 i.e. the Appellants, the PW 1, the Informant has also attributed specific overt act against Accused No. 4, 8, 9, 10, 11, 12 and 14; however the involvement of the said Accused is not stated by the PW 2, the injured himself and therefore the Ld. Judge had only consider the case of prosecution against only those accused, whose involvement is established by the prosecution with sufficient corroboration.

The alleged omissions in the evidence of PW 2 are also certainly cannot be termed as omissions. (Cross Exam of PW 2 page 230, line 3) The PW 2 has deposed to have stated about roll of accused no. 5, 7 and 13 to the police and necessary question to that effect was never put to the investigating officer and as such there are no improvement / omissions in the evidence of PW 2. The Ld. Trial Judge has dealt with this aspect in the Judgment at para 11 page 270.

The PW 3 has stated that in all 15 accused told them on their way to the Spot of incident that their tiger (PW 2) is fallen and that they assaulted PW 3 and his mother GG with fist and kicks. The said version is also supported by PW 1. The PW 3 has further stated that the accused No. 13 GJP and Accused No. 7 NNP pulled them by the side of road. The Ld. Judge however has not relied upon said version for want of preciseness and for want of sufficient corroboration.

It is submitted that the Ld. Judge has scrutinized the evidence of prosecution with specific details in Para 20 [Page 282] of the Judgment and therefore judge because of some of the accused came to acquitted by the Trial Court, that certainly can not be a ground in favour of the appellants, enabling them to contend that the evidence of prosecution should be discarded as against them also.

The cross examination of PW 1 and PW 2 do not make out any ground in favour of the Appellants so as to doubt the evidence of the said witnesses and the evidence of PW's and more particularly of the injured himself is sufficient beyond reasonable doubt to bring home the guilt of the accused.

Thus the direct evidence adduced by the prosecution witnesses proves the involvement in the said incident beyond all reasonable doubt.

: CIRCUMSTANTIAL EVIDENCE :

Apart from the direct evidence the circumstantial evidence adduced by the prosecution also sufficiently point out the guilt of the accused / appellants beyond all reasonable doubts.

The prosecution called upon the accused to admit the genuineness of certain documents relied upon the prosecution and the defense has admitted the genuineness of the said documents and the documents as stated herein above came to be exhibited. (The said documents thus will have to be read in evidence as per Section 294 of Cr.P.C. r/w. Sec. 58 of Evidence Act)

: SCENE OF OFFENCE PANCHANAMA : Exh. 39 - Page 187

The Scene of Offence Panchnama dated 2/11/0000 is admitted by defense. The PW 1 has specifically pointed out the place where the PW 2 was assaulted and the other details with there specific distance has been specified in the said Panchnama. It is mentioned in the said panchnama that at the said place there was pool of blood admeasuring 1 ft x 1 ft and there was blood at three places on grass. This fact demonstrates the extent of blood loss suffered by the PW 2 VG.

During Cross Examination of PW 1, a Photograph of said spot was shown to PW 1 (Exh. 55) the said Photograph further corroborates the said panchanama and evidence of prosecution witness in respect of the place where incident took place.

The blood group of the injured PW 2 turned out to be "B" as per the CA report at Exhibit 48 and the CA report further reveals that the blood stain earth and blood stain grass attached from spot was of blood group "B".

: PANCHANAMA OF ATTACHMENT OF CLOTHES OF THE INJURED VG

PW 2: Exh. 40 - Page 189 & Exh. 41 - Page 181

After the incident the injured PW 2 was taken to XXX Municipal Dispensary first and from there he was taken to Sion Hospital, Mumbai. The some of the clothes on the person of the PW 2 were produced by the wife of PW 2 and same were attached by police under panchanama at Exh. 41 and some of the clothes of PW 2 were produced P. C. Dnyaneshwar Shelar who had taken PW 2 to Sion Hospital. All the said clothes were blood stained with blood group "B".

The Panchnama at Exhibit 41 shows that the clothes of PW 2 were produced by P.C. Shelar who had taken him to Sion Hospital and it gives support to the case of prosecution, that the injured was first taken to Reti Bunder Police outpost, where PW 1 narrated incident to PC Shelar and the injured PW 2 was taken XXX Hospital in Rickshaw by said P.C. Shelar.

: ARREST PANCHANAMA: Exh. 42 - Page 193

The 15 Accused in this case were arrested under Arrest Panchnama dated 16/11/0000 and under same panchanama the clothes of each of the accused came to be seized and it shows that all the accused were together and were absconding for considerable period.

So far as Appellants herein are concerned, as per C. A. Report, the human blood stains were found on the clothe of the Accused No. 1 KBB and blood stains of blood group "B" i.e. that of the injured were found on the shirt of Accused No. 7 NNP.

: DISCOVERY PANCHANAMA AT THE INSTANCE OF ACCUSED NO. 1:

Exh. 63 - Page 243

The discovery of the weapons used by the accused in the said incident came to be discovered pursuant to disclosure statement made by the Accused No. 1 KBB. The said memorandum panchanama and discovery panchnama has been proved by PW 5 SDP.

Under said Panchnama 2 swords, 3 axes and 2 sticks were recovered from the Accused No. 1 and the said articles were sent to Chemical Analyzer and two swords and one axe were found to be stained with human blood; however blood group could not be established conclusively and rest of the weapons were stained with blood; however blood was disintegrated, hence unsuitable for blood grouping.

The Accused No. 1 /Appellant No. 1 has not offered any explanation whatsoever in respect of said incriminating circumstance appearing against him.

: MEDICAL CERTIFICATES OF PW 2 VG: Exh. 45 - Page 197, Exh. 50 – Page 216 and Exh. 61- Page 239.

The Medical Certificate of VG at Exh. 45 has been issued by Medical Officer, XXX Municipal Dispensary and the PW 4 M.O., XXX Municipal Dispensary has produced case papers of injured PW 2 at Exh. 61.

The Medical Certificate of VG at Exh. 50 has been issued by Medical Officer, L. T. M. C. Hospital (Sion) Mumbai. The said medical certificate has been admitted by defense u/s. 294 of Cr.P.C. and the said Certificate discloses that PW 2 VG was taken to Sion Hospital by PC No. 2824 i.e. Mr. Shelar and PW 2 was admitted on 1/11/0000 and was discharged on 5/12/0000. The said certificate further reveals that the PW 2 had sustained fractures.

: DOCUMENTS ADMITTED BY DEFENSE U/S. 294 OF CR.P.C. :

When notice u/s. 294 in respect of list of documents is given the other side is required to admit or deny GENUINENESS of each such document and when genuineness of document is not disputed such documents may be read in evidence. The defense counsel while admitting document at Sr. No. 7 to 12 i.e. medical certificates, C. A. Report, etc. has made following endorsement

The document at Serial No. 7 to 12 are also admitted by accused as for their genuineness and authenticity. They be exhibited thus read in evidence.

Since the genuineness of the said documents was admitted by defense, the said document are required to be read in evidence, since as per Section 294 of Cr.P.C. r/w. Sec. 58 of Evidence Act.

In the circumstances the PW 2 was admitted in Sion Hospital on the same day and he was indoor patient for more than one month with fracture injuries had been duly established, without requiring any further proof and without requiring examination of medical officer of Sion Hospital as witness by the prosecution.

The further document admitted by defense i.e. spot panchanama discloses that in the said incident, the PW 2 suffered huge loss of blood and no special knowledge is necessary to know that loss of blood could also be a reason for death. The PW 4 the Medical Officer, XXX has categorically stated that the injuries sustained by PW 2 were grievous and cumulative effect of all injuries can cause death.

The documents at Ex. 41 Panchnama of attachment of clothes of PW 2 - Injured VG and Ex. 50 Medical Certificate issued by Sion Hospital shows the roll played by P.C. Shelar and at Reti-bunder out post though the incident was narrated to PC Shelar, from there immediately PW 2 was taken to XXX Medical Hospital and both the witnesses PW 1 and PW 3 have categorically stated that nothing was written in said outpost (PW1-Page 223 Para 10 & PW 3 Page 234 para 2) and therefore non examination of PC Shelar cannot create any doubt as to authenticity of prosecution case.

In the circumstances it is most respectfully submitted that the Ld. Trial Judge has rightly convicted and sentenced the Appellants and no interference by this Hon'ble Court is necessary and therefore the Appeal may kindly be dismissed and the Appellant be directed to surrender themselves and undergo the sentence awarded by the Trial Court.

Mumbai
17/1/0000

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