

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1183/2011

S K KHAJA

...APPELLANT(S)

VERSUS

THE STATE OF MAHARASHTRA

...RESPONDENT(S)

O R D E R

1. The appellant/accused - S K Khaja has preferred the present appeal challenging the impugned judgment and order dated 07.01.2011 passed by the High Court of Judicature at Bombay, Bench at Aurangabad in Criminal Appeal No. 162 of 1999, whereby the High Court has dismissed the appeal and confirmed the judgment and order of conviction dated 31.03.1999 passed by the 3<sup>rd</sup> Additional Sessions Judge, Nanded in Sessions Case No. 183 of 1996. The Trial Court had convicted the appellant- accused for the offence under Sections 307 and 332 of IPC and directed to undergo rigorous imprisonment for five years and two years for the said offences respectively.

2. The complainant - Mohammad Khan Pathan (PW-2), Police Head Constable, was attached to Police Station Itwara, Nanded, in 1995. As per the case of the prosecution, Kamalbai Gupta (PW-6) and ten other people from Vinkar Colony, Nanded, had made a complaint to the Police Station Nanded against the present

appellant - S K Khaja alleging that the appellant/accused was demanding ransom and threatening the public at large. The Police Station In-charge - Surendra Mandhan, Police Inspector (PW-7) therefore, ordered the police head constable - Mohammad Khan Pathan (PW-2) to get the custody of accused/appellant in the Police Station for enquiry in connection with the complaint.

3. On 10.03.1995, upon receiving the information about the whereabouts of the appellant - accused, the said Mohammad Khan Pathan (PW-2) along with his colleagues, i.e., other police staff, went in search of the accused. On that day, however, the accused was not found. Thereafter, on 11.03.1995 at about 08.00 p.m., the Head constable - Mohammad Khan Pathan (PW-2) and other police staff on receiving the information that the accused - S K Khaja was present in the Ram Rahim Nagar, Nanded, they went to Ram Rahim Nagar, Nanded in order to get custody of the accused. On reaching at the spot, i.e., Ram Rahim Nagar, Nanded, the appellant/accused was seen running from the spot and entering into a Masjid at Madina Nagar, Nanded. Mohammad Khan Pathan (PW-2) and his team therefore chased the accused and entered into the Masjid at Madina Nagar to catch hold of him. When the said Mohammad Khan Pathan was trying to catch and get hold of the accused, he tried to assault Mohammad Pathan on his head by a Gupti. However, Mohammad Khan Pathan while avoiding the blow on his head, got injury on his right shoulder. Thereafter, the other police constables and staff caught hold of the appellant/accused and the police constable - Suresh Jakkawad (PW-5) snatched Gupti from him. The appellant/accused was

brought to the Police Station. The Head constable Mohammad Khan Pathan (PW-2) lodged the complaint, which was registered as Crime No. 45 of 1995 at Police Station, Itwara, Nanded for the offence(s) punishable under Sections 307 and 332 of the Indian Penal Code, 1860 (for short "IPC") and under Section 135 of Bombay Police Act, 1951.

4. After completion of the investigation, chargesheet was filed and the trial was conducted against the appellant/accused - S K Khaja, in which he was convicted and sentenced as stated hereinabove. The said judgment and order of Trial Court was confirmed by the High Court *vide* impugned judgment and order.

5. Mr. Sudhanshu S. Choudhari, learned counsel appearing on behalf of the appellant submitted that even if the case of the prosecution was held to be proved against the appellant *in toto*, the injuries suffered by the complainant - Mohammad Khan Pathan (PW-2) were very simple in nature and would not attract offence under Section 307 of the IPC. According to him, the incident is very old, and the appellant/accused - S K Khaja has a large family to maintain. He has also urged to take sympathetic view in the present appeal.

6. However, Ms. Yugandhara Pawar Jha, learned counsel appearing on behalf of the respondent - State of Maharashtra vehemently submitted that after the incident in question the appellant/accused was involved in four cases, out of which three cases were registered during the pendency of the present appeal and as such, he had misused the liberty granted to him by this court while releasing him on bail. She further submitted that

considering the seriousness and gravity of the offence, and the fact that both the courts have concurrently found the appellant guilty of the alleged offences, this court should not interfere with the impugned judgment and order of the High Court.

7. Having heard the learned counsel for the parties and having perused the evidence on record, particularly the evidence of the complainant - Mohammad Khan Pathan (PW-2) and other police officers, who were the part of the team and who had accompanied the complainant - Mohammad Khan Pathan (PW-2) at the time of the incident in question, we are of the opinion that the trial court, as well as, the High Court have rightly appreciated the evidence and convicted the appellant/accused - S K Khaja for the offence punishable under Sections 307 and 332 of the IPC.

8. As rightly submitted by the learned counsel appearing on behalf of the respondent - State, merely because the injuries sustained by the complainant - Mohammad Khan Pathan (PW-2) were very simple in nature, that would not absolve the appellant/accused from being convicted for the offence under Section 307 of the IPC. What is important is an intention coupled with the overt act committed by the appellant/accused. In the instant case, it was proved by cogent evidence that the appellant/accused had tried to assault the complainant - Mohammad Khan Pathan (PW-2) with Gupti and that too on his head. Though the complainant received injury on his right shoulder while avoiding blow on his head, from the blunt part of the Gupti, such an overt act on the part of the appellant/accused would be covered by the offence punishable under Section 307 of

the IPC. There being no infirmity pointed out by the learned counsel for the appellant in the impugned judgment and order of the High Court, we are of the opinion that the present appeal deserves to be dismissed.

9. Having regard to the cases filed against the appellant/accused - S K Khaja pending the present appeal, we are also not inclined to take any lenient view and to reduce the sentence imposed by the trial court and confirmed by the High Court.

10. In that view of the matter, the present appeal is dismissed.

11. The appellant/accused - S K Khaja is directed to surrender before the trial Court within a period of four weeks from today.

12. Pending application(s), if any, shall stand disposed of.

.....J.  
(BELA M. TRIVEDI)

.....J.  
(DIPANKAR DATTA)

NEW DELHI;  
AUGUST 23, 2023.

ITEM NO.104

COURT NO.15

SECTION II-A

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G SCriminal Appeal No. 1183/2011

SK KHAJA

Appellant(s)

VERSUS

THE STATE OF MAHARASHTRA

Respondent(s)

Date : 23-08-2023 This matter was called on for hearing today.

CORAM :

HON'BLE MS. JUSTICE BELA M. TRIVEDI

HON'BLE MR. JUSTICE DIPANKAR DATTA

For Appellant(s) Mr. Sudhanshu S. Choudhari, AOR

For Respondent(s) Ms. Yugandhara Pawar Jha, Adv.  
Mr. Siddharth Dharmadhikari, Adv.  
Mr. Aaditya Aniruddha Pande, AOR  
Mr. Bharat Bagla, Adv.  
Mr. Sourav Singh, Adv.  
Mr. Aditya Krishna, Adv.UPON hearing the counsel the Court made the following  
O R D E R

The appeal is dismissed in terms of the signed order.

The appellant/accused - S K Khaja is directed to surrender  
before the trial Court within a period of four weeks from today.

Pending application(s), if any, shall stand disposed of.

(BABITA PANDEY)  
COURT MASTER (SH)(R.S. NARAYANAN)  
ASSISTANT REGISTRAR  
(signed order is placed on the file)