

Bombay High Court

Manohar S/O Pandurang Bawane (In ... vs The State Of Maharashtra, Through ... on 28 July, 2016

Bench: S.B. Shukre

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPEAL NO. 66 OF 2016

Manohar Pandurang Bawane
aged about 46 yrs., Occp. Carpenter,
r/o Ambedkar Nagar, Near Mata Chowk,

Chandrapur, Tah. & Distt.
Chandrapur.

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APPELLANT

.. Versus

..

The State of Maharashtra

through Police Station Officer,
Ramnagar, Chandrapur, Tah. & Distt.
Chandrapur.

::

RESPONDENT

.....
Shri Rohit Joshi, Advocate for the appellant.

Shri S. S. Doifode, A.P.P. for the respondent.
.....

CORAM : S. B. SHUKRE, J.

DATED : 28th JULY, 2016 O R A L J U D G M E N T O R A L J U D G M E N T

1. Heard. This matter is taken up for final hearing.

2. As the appeal has been taken up for final hearing, there is no need to pass any order on criminal application No. 441 of 2016, and it is hereby disposed of accordingly.

3. The appellant has been convicted by judgment and order dated 28/01/2016 of the learned Special Judge, Chandrapur for the offences punishable under Sections 323 and 307 of the Indian Penal Code ("I.P.C." for short) and awarded rigorous imprisonments of one year and five years and also sentences of fine amounts of Rs.1,000/-

and 5,000/- respectively together with default sentences of three months and six months respectively.

4. The allegation made against this appellant is that on 13/5/2010, this appellant assaulted the complainant by means of a knife for the reason that this appellant suspected that the complainant was having an eye upon his wife. In this assault, this appellant allegedly dealt blows of knife to the abdomen, neck and left knee of the complainant and thus seriously injured him. On merits of the case, learned Special Judge found that the offences punishable under Sections 323 and 307 I.P.C. were proved beyond reasonable doubt.

The learned Special Judge also found that the other offence punishable under Section 3(2) (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ("Prevention of Atrocities Act" for short), which was additionally charged against this appellant was not proved beyond reasonable doubt and accordingly by the impugned judgment and order, this appellant was convicted for the afore stated I.P.C. offences and acquitted of the offence punishable under the Prevention of Atrocities Act. Not being satisfied with the same, the appellant is before this Court in the present appeal.

5. Learned Counsel for the appellant has invited my attention to the admissions given by the Medical Officer, Dr. Nilesh Padgelwar to support his argument that at the most, offence punishable under Section 324 I.P.C. would be made and not under Section 307 I.P.C.

6. Learned A.P.P. for the State submits that these admissions are indeed there and, therefore, appropriate order may be passed.

7. P.W.-8 Dr. Nilesh Padgelwar has clearly admitted that unless injury is caused to the internal organs, it cannot be said that the injury is grievous as well as dangerous. P.W.-8 Dr. Nilesh also could not state as to whether or not the injuries suffered by the complainant, which were in the nature of one stab injury on his abdomen, one stab injury on his left knee and one lacerated wound on the right side of the neck, were grievous or simple in nature. There is no evidence brought on record to show that injuries sustained by the complainant were sufficient in the ordinary course of nature to cause his death. Such evidence was necessary in this case and without such an evidence

being present on record, no findings on the commission of the offence of attempt to commit murder by this appellant could have been recorded by the learned Special Judge. The impugned judgment and order also do not show that the learned Special Judge had taken any pains to consider these aspects and record in specific manner such a finding.

8. As stated earlier, a finding of guilt under Section 307 I.P.C.

could not have been recorded without the prerequisites being met and at the most, what could have been held was proving of the commission of offence of hurt by using a knife, which is punishable under Section 324 I.P.C., which I do so here. It being a lesser offence, the conviction of the appellant can be converted into the one for offence punishable under Section 324 I.P.C., which I do so. The appellant has also been convicted for the offence punishable under Section 323 I.P.C.

However, in view of the fact that now the appellant has been found to have committed the offence punishable under Section 324 I.P.C., the order of conviction and sentence for the offence punishable under Section 323 I.P.C. awarded to the appellant would have to be quashed and set aside.

9. On the question of sentence, learned Counsel for the appellant submits that there have been mitigating circumstances going in favour of the appellant. He submits that now the relations between the side of the complainant and the family of this appellant have been improved by the passage of time and an affidavit to this effect has also been filed on record by complainant Sanjiv Madhavrao Ambekar on 30/3/2016. He further submits that the appellant has two school going children and that there are no criminal antecedents to the appellant.

10. Learned A.P.P. for the State submits that appropriate order be passed in this regard.

11. Upon considering the affidavit dated 30/3/2016 and also the fact that there are no criminal antecedents to the appellant, I am of the view that the appellant deserves to be shown leniency by reducing the sentence awarded to him to a period of detention already undergone by him. The appellant is in jail since 28/01/2016 and was also previously detained for 53 days. Such period of detention of the appellant having been already undergone by him should meet the ends of justice. Hence, the order.:

- a) The appeal is partly allowed.
- b) Conviction of the appellant for the offence

punishable under Section 307 of the Indian Penal Code and the sentence awarded to him for this offence are hereby quashed and set aside and it is substituted by his conviction for an offence punishable under Section 324 of the Indian Penal Code for which the sentence of imprisonment stands imposed upon him for such a period as is equivalent to the period of detention already

undergone by him.

c) The conviction awarded to the appellant for an offence punishable under Section 323 I.P.C. and sentence given to him for this offence are hereby quashed and set aside.

d) So far as the fine amount of Rs.5,000/- is concerned, the same is converted as fine amount of an offence punishable under Section 324 I.P.C.

e) The fine amount of Rs.1,000/- for an offence punishable under Section 323 I.P.C. be refunded to the appellant.

f) The appellant be set at liberty forthwith, if not required in any other case.

JUDGE wwl CERTIFICATE "I certify that this Judgment uploaded is a true and correct copy of original signed Judgment."

Uploaded by : W.W. Lichade, P.A.

Uploaded on :02/8/2016