

A SURYAKANT BABURAO @ RAMRAO PHAD

v.

STATE OF MAHARASHTRA AND OTHERS

(Criminal Appeal No.1161 of 2019)

B JULY 30, 2019

**[R. BANUMATHI AND A.S. BOPANNA, JJ.]**

*Penal Code, 1860 – ss.307, 323, 506 r/w. 34 – Arms Act – s.4 r/w s.25 – Attempt to murder – There was some exchange of words between the accused persons (No. 1 to 3) and PW-6 – In this quarrel, Respondent No.2-accused no.1 fired a shot from his pistol at PW-6 on his chest – Hearing the sound PW-5 & 7 tried to intervene – PW-7 was also shot on his left knee by accused no.1 and PW-5 was beaten up by the accused persons causing grievous hurt – FIR was registered u/s. 307 r/w. s. 34 IPC, ss.323 and 506 IPC – Doctor stated injuries caused to PW-6 were capable of causing death – Trial Court convicted accused Nos. 1 to 3 u/s. 307 r/w s.34 IPC and sentenced them to undergo rigorous imprisonment for seven years and imposed fine of Rs.15000/- – Trial Court also convicted them u/s. 323 r/w. 34 IPC and sentenced each of them to undergo rigorous imprisonment for six months and pay fine of Rs. 500/- – Accused were also directed to pay Rs. 20,000/- to injured PW-6 & 7 as compensation – High Court affirmed the conviction of respondent No.2-accused no.1 u/s. 307 r/w. s. 34 IPC, however, reduced the sentence of imprisonment from seven years to five years and imposed fine amount of Rs. 25,000/- – Insofar, respondent Nos. 3 and 4-accused Nos. 2 & 3 are concerned, the High Court acquitted them from the charges u/s. 307 r/w. 34 IPC and instead convicted them u/s. 326 r/w. s.34 IPC and reduced the sentence of imprisonment imposed upon them to the period already undergone and imposed a fine of Rs.25,000/- – High Court maintained conviction of accused nos. 1 to 3 u/s. 323 r/w. s.34 IPC – On appeal, held: When trial Court exercised its discretion in imposing seven years of sentence of imprisonment, the High Court ought to have kept in view the weapon used by accused No.1 and the nature of injuries caused to PW-6 and the opinion of the Doctor – High Court was not right in*

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*reducing the sentence of imprisonment imposed upon accused no.1 – Since the enhanced compensation was paid by accused no. 1, which withdrawn by injured-victims, for conviction u/s. 307 r/w. s.34 IPC, the accused no.1 directed to undergo imprisonment for six years and six months – So far as accused no. 2 & 3 are concerned, they were not armed and alleged to have attacked the injured with fists, kicks and with sticks – Thus, no interference required with their acquittal u/s. 307 r/w. s. 34 IPC and reduction of sentence of imprisonment u/s. 326 r/w. s.34 IPC.*

**Partly allowing the appeal, the Court**

**HELD: 1. While considering the quantum of sentence, the courts are expected to consider all relevant facts and circumstances of the case, in particular, nature of injuries caused in the occurrence and the weapon used which will have bearing on the question of sentence and the Courts are bound to impose sentence commensurate with the gravity of the offence. Considering the nature of injuries caused to PW-6 i.e. gun shot wounds in the chest and the opinion of Doctor that the injuries caused to PW-6 are capable of causing death, the High Court was not right in reducing the sentence of first accused. [Para 12] [577-D-E]**

**2. Considering the nature of the injuries caused to PW-6 and PW-7 and the facts and circumstances of the case, the trial court convicted accused No.1 under Section 307 read with Section 34 IPC and sentenced him seven years rigorous imprisonment with a fine of Rs.15,000/-. When the trial court has exercised its discretion in imposing seven years of sentence of imprisonment, the High Court ought to have kept in view the weapon used by accused No.1 and the nature of injuries caused to PW-6 and the opinion of the Doctor. The courts must not only keep in view the right of the accused, but must also keep in view the interest of the victim and society at large. The courts have been consistent in approach that a reasonable proportion has to be maintained between the gravity of the offence and the punishment. While it is true that the sentence imposed upon the accused should not be harsh, inadequacy of sentence may lead to sufferance of the**

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- A victim and the community at large. So far as the first accused is concerned, the High Court was not right in reducing the sentence of imprisonment imposed upon first accused. As pointed out earlier, the High Court reduced the sentence of imprisonment from seven years to five years and increased the fine amount to Rs.25,000/- and part of the said fine amount was ordered to be paid as compensation to the injured PW-6 and PW-7. Since the enhanced compensation was paid by accused No.1 which is said to have been withdrawn by injured-victims, for conviction under Section 307 read with Section 34 IPC, the first accused shall undergo rigorous imprisonment for six years and six months.
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- C [Para 16] [578-G-H; 579-A-D]

3. So far as respondent Nos.3 and 4-accused Nos.2 and 3 are concerned, at the time of occurrence, they were not armed. Accused Nos.2 and 3 are alleged to have attacked the injured with fist and kicked and with sticks. Considering the facts and circumstances of the case and the evidence on record, this Court is not inclined to interfere with the acquittal of accused Nos.2 and 3 under Section 307 read with Section 34 IPC. So far as conviction under Section 323 read with Section 34 IPC, the High Court took into consideration that accused No.2 was nineteen years old at the time of occurrence and accused No.3 was thirty-eight years old and keeping in view their age and family circumstances and that they were not having criminal antecedents, the High Court thought fit to reduce the sentence of imprisonment from six months to the period already undergone by them. Since accused Nos.2 and 3 were not armed with the deadly weapons, this Court is not inclined to interfere with their acquittal under Section 307 read with Section 34 IPC and the reduction of sentence of imprisonment under Section 326 read with Section 34 IPC. [Para 17][579-E-H]
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- G *State of Punjab v. Bawa Singh* (2015) 3 SCC 441 : [2015] 1 SCR 709 ; *Ravinder Singh v. State of Haryana* (2015) 11 SCC 588 ; *Sevaka Perumal and Another v. State of Tamil Nadu* (1991) 3 SCC 471 : [1991] 2 SCR 711 – relied on.

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**Case Law Reference**

<b>[2015] 1 SCR 709</b>	<b>relied on</b>	<b>Para 13</b>
<b>(2015) 11 SCC 588</b>	<b>relied on</b>	<b>Para 14</b>
<b>[1991] 2 SCR 711</b>	<b>relied on</b>	<b>Para 15</b>

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1161 of 2019 B

From the Judgment and Order dated 12.07.2018 of the High Court of Judicature of Bombay, Bench at Aurangabad in Criminal Appeal No.11 of 2016

Uday B. Dube, Adv. for the Appellant. C

Nishant Ramakantrao Katneshwarkar, Sudhanshu S. Choudhari, Sandeep Sudhakar Deshmukh, Advs. for the Respondents.

The Judgment of the Court was delivered by

**R. BANUMATHI, J.** D

1. Leave granted.

2. This appeal arises out of the judgment dated 12.07.2018 passed by the High Court of Judicature of Bombay at Aurangabad in Criminal Appeal No.11 of 2016 in and by which the High Court affirmed the conviction of respondent No.2-accused No.1 under Section 307 IPC read with Section 34 IPC and reduced the sentence of imprisonment imposed upon him from seven years to five years and imposed fine amount of Rs.25,000/-. Insofar respondent Nos.3 and 4-accused Nos.2 and 3, the High Court acquitted them from the charges under Section 307 read with Section 34 IPC and instead convicted them under Section 326 read with Section 34 IPC and reduced the sentence of imprisonment imposed upon them to the period already undergone and imposed fine amount of Rs.25,000/- upon each of them. The High Court maintained the conviction of accused Nos.1 to 3 under Section 323 read with Section 34 IPC also the sentence of imprisonment imposed upon each of them. E  
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3. The appellant-Complainant has filed this appeal challenging the reduction of sentence of imprisonment of respondent Nos.2 to 4. Case of prosecution is that on 24.01.2012 at about 05.30 PM, when

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- A Chandrakant (PW-6) was proceeding towards his land via Pangaon 'T' point, respondent No.2-Devraj (A1) who along with respondent No.3-Ashish (A2) and respondent No.4-Balaji (A3) was standing near the mobile shop of one Prahlad Joshi, asked PW-6-Chandrakant why he obstructed respondent No.4-Balaji (A3) from spreading the rubble in his field and there was some exchange of words between them.
- B In this quarrel, Devraj (A1) took out pistol from his waist and fired one shot at PW-6-Chandrakant on his chest. Hearing the sound, Suryakant (PW-7), Shivaji (PW-5) and others rushed to the spot. Accused Nos.2 and 3 were alleged to be holding stick and stone respectively in their hands. When Suryakant (PW-7) tried to intervene, accused No.1 fired a bullet
- C from his pistol which hit on the left knee of PW-7. When Shivaji Phad (PW-5) tried to intervene, accused persons beat him with fists and kicked and also inflicted a knife blow on him causing him grievous hurt and then accused fled away. Injured PW-6 and PW-7 were taken to hospital and were given treatment. Suryakant (PW-7) lodged the complaint based on
- D which FIR was registered under Section 307 read with Section 34 IPC, Sections 323 and 506 IPC. On completion of investigation, charge sheet was filed against the accused under Sections 307, 323 and 506 read with Section 34 IPC and under Section 4 read with Section 25 of the Arms Act. Later, charge under Section 4 read with Section 25 of the Arms Act was altered to Section 3 read with Section 25 of the Arms Act.
- E 4. To prove the guilt of the accused, in the trial court the prosecution examined thirteen witnesses and produced number of documents. Relying upon the evidence of injured eye-witnesses Chandrakant (PW-6), Suryakant (PW-7) and eye-witness Ram Phad (PW-4) and also upon the medical evidence, the trial court vide judgment dated 23.12.2015
- F convicted accused Nos.1 to 3 under Section 307 IPC read with Section 34 IPC and sentenced each of them to undergo rigorous imprisonment for seven years and also to pay a fine of Rs.15,000/- each with default clause. The trial court also convicted them under Section 323 read with Section 34 IPC and sentenced each of them to undergo rigorous
- G imprisonment for six months and to pay a fine of Rs.500/- each with default clause. The trial court directed that out of the fine amount paid by the accused, Rs.20,000/- be given to injured Chandrakant (PW-6) and Suryakant (PW-7) each as compensation as per the provision of Section 357 Cr.P.C.

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5. In the appeal filed before the High Court, the High Court affirmed the conviction of accused No.1-Devraj under Section 307 read with Section 34 IPC but reduced the sentence of imprisonment imposed upon him to five years. Additionally, the High Court directed accused No.1-Devraj to pay a fine of Rs.25,000/- with default clause. The High Court also convicted accused No.1-Devraj under Section 326 read with Section 34 IPC and reduced the sentence of imprisonment imposed upon him to the period already undergone by him and also directed to pay a fine of Rs.15,000/- with default clause. Insofar as conviction and sentence of imprisonment under Section 323 read with Section 34 IPC, the High Court maintained the same. The High Court acquitted accused No.2-Ashish and accused No.3-Balaji from the charge under Section 307 read with Section 34 IPC and instead convicted them under Section 326 read with Section 34 IPC and imposed the sentence of imprisonment to the period already undergone by them and accused Nos.2 and 3 were directed to pay a fine of Rs.25,000/- each with default clause. The High Court maintained the conviction and sentence of imprisonment under Section 323 IPC read with Section 34 IPC imposed upon accused No.2-Ashish and accused No.3-Balaji. Out of the fine amount deposited by the accused, a sum of Rs.60,000/- was directed to be paid to PW-6-Chandrakant and a sum of Rs.30,000/- was ordered to be paid to PW-7-Suryakant as compensation under Section 357 Cr.P.C. Being aggrieved, injured complainant-Suryakant (PW-7) has preferred this appeal.

6. We have heard Mr. Uday B. Dube, learned counsel appearing for the appellant and Mr. Sudhanshu S. Choudhari, learned counsel appearing for respondent Nos.2 and 3-accused Nos.1 and 2 and Mr. Sandeep Sudhakar Deshmukh, learned counsel appearing for respondent No.4-accused No.3 and also Mr. Nishant R. Katneshwarkar, learned counsel appearing for the State and perused the impugned judgment and materials on record.

7. The learned counsel appearing for the appellant *inter alia* submitted that accused No.1-Devraj shot a bullet in the chest of PW-6-Chandrakant which pierced through his chest and came out from the back side and PW-11-Dr. Manoj Landge opined that the injury sustained by PW-6-Chandrakant was grievous in nature which was capable of causing death and while so, the High Court was not right in showing undue sympathy to the respondents-accused and reducing the sentence of imprisonment imposed upon them.

A 8. The learned counsel appearing for respondent Nos.2 to  
4-accused Nos.1 to 3 have submitted that considering the facts and  
circumstances of the case and the age of respondent Nos.3 and 4 and  
other circumstances, the High Court exercised its discretion in reducing  
the sentence of imprisonment and at the same time increased the fine  
B amount to be paid as compensation as per the provision under Section  
357 Cr.P.C. and the impugned judgment reducing the sentence of  
imprisonment warrants no interference.

C 9. A person committing an offence under Section 307 IPC can be  
ordered to undergo imprisonment for life. To justify conviction under  
Section 307 IPC, intention of causing death or that it was done with the  
intention of causing such injury which is likely to cause death is necessary  
to constitute the offence. Although the nature of injury actually caused  
would be of considerable assistance in coming to a finding as to the  
intention of the accused. Such intention may also be deduced from  
other circumstances.

D 10. Accused No.1-Devraj was serving in the Army and was  
possessing a licence for carrying the pistol. If the evidence of injured  
witnesses PW-6-Chandrakant and PW-7-Suryakant and eye-witness  
PW-4-Ram Phad is considered in its entirety, it becomes clear that the  
attempt by accused No.1-Devraj was with intention to teach a lesson to  
E PW-6-Chandrakant as to why he opposed accused No.3-Balaji from  
spreading the rubble in his field and there was some hot exchange of  
words between them. Accused No.1-Devraj carrying the pistol shot at  
PW-6-Chandrakant at his chest which pierced through his chest. When  
PW-7-Suryakant tried to interfere, accused No.1-Devraj shot at PW-7-  
Suryakant also.

F 11. In the occurrence, PWs 6 and 7 sustained the following injuries:-

**“Injuries noticed on person of PW-6-Chandrakant**

- G 1) Punctured wound over lower 1/3<sup>rd</sup> of Pre-sternal area 2 × 2 cm  
oval, age less than six hours.
- 2) Punctured wound over right side of chest post-axillary line about  
in 7 inter costal space 2 × 2 cm oval, age less than six hours.
- 3) Contused lacerated wound over scalp left parieto occipital region,  
2 × 1 × 0.5 cm, age less than six hours, simple in nature.

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**Injuries noticed on person of PW-7-Suryakant**

1) Punctured wound on lateral aspect of upper part of left knee 2 × 2 cm oval, age less than six hours, simple in nature.

2) Punctured wound over medial aspect of popliteal region 2 × 2 cm oval, age less than six hours. Grievous in nature. X-ray shows displaced fracture of supracondylor.

The bullet injury pierced through the chest of PW-6-Chandrakant and came out from the back side. In his evidence, PW-11-Dr. Manoj Landge specifically stated that injuries No.1 and 2 caused to PW-6-Chandrakant were capable of causing death. So far as the injuries caused to PW-7-Suryakant are concerned, PW-11-Dr. Manoj Landge opined that they were not fatal to life.

12. While considering the quantum of sentence, the courts are expected to consider all relevant facts and circumstances of the case, in particular, nature of injuries caused in the occurrence and the weapon used which will have bearing on the question of sentence and the Courts are bound to impose sentence commensurate with the gravity of the offence. Considering the nature of injuries caused to PW-6-Chandrakant i.e. gun shot wounds in the chest and the opinion of Doctor that the injuries caused to PW-6 are capable of causing death, in our view, the High Court was not right in reducing the sentence of first accused-Devraj.

13. The question of awarding sentence is a matter of discretion for the courts and has to be exercised on consideration of facts and circumstances of the case. Though the court has discretion in awarding the sentence, it should be commensurate with the gravity of the offence. The court has to record brief reasons to explain the choice of sentence. In *State of Punjab v. Bawa Singh (2015) 3 SCC 441*, the Supreme Court in para (16) held as under:-

“16. .... undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law. It is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed. The sentencing courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed



- A to impose a sentence commensurate with the gravity of the offence. The court must not only keep in view the rights of the victim of the crime but also the society at large while considering the imposition of appropriate punishment. Meagre sentence imposed solely on account of lapse of time without considering the degree of the offence will be counterproductive in the long run and against the interest of the society.”
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14. In *Ravinder Singh v. State of Haryana* (2015) 11 SCC 588, it was held as under:-

- C “11. The question of sentence is always a difficult task requiring balancing of various considerations. The question of awarding sentence is a matter of discretion to be exercised on consideration of circumstances aggravating and mitigating in the individual cases. The law courts have been consistent in the approach that a reasonable proportion has to be maintained between the seriousness of the crime and the punishment. While it is true that
- D a sentence disproportionately severe should not be passed that does not clothe the court with an option to award the sentence manifestly inadequate. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime.”

- E 15. In *Sevaka Perumal and another v. State of Tamil Nadu* (1991) 3 SCC 471, it was held as under:-

- F “10. ....undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under serious threats. If the courts did not protect the injured, the injured would then resort to private vengeance. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed etc.”

- G 16. Considering the nature of the injuries caused to PW-6-Chandrakant and PW-7-Suryakant and the facts and circumstances of the case, the trial court convicted accused No.1-Devraj under Section 307 read with Section 34 IPC and sentenced him seven years rigorous imprisonment with a fine of Rs.15,000/-. When the trial court has

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exercised its discretion in imposing seven years of sentence of imprisonment, the High Court ought to have kept in view the weapon used by accused No.1 and the nature of injuries caused to PW-6-Chandrakant and the opinion of the Doctor. The courts must not only keep in view the right of the accused, but must also keep in view the interest of the victim and society at large. The courts have been consistent in approach that a reasonable proportion has to be maintained between the gravity of the offence and the punishment. While it is true that the sentence imposed upon the accused should not be harsh, inadequacy of sentence may lead to sufferance of the victim and the community at large. So far as the first accused-Devraj is concerned, the High Court was not right in reducing the sentence of imprisonment imposed upon first accused. As pointed out earlier, the High Court reduced the sentence of imprisonment from seven years to five years and increased the fine amount to Rs.25,000/- and part of the said fine amount was ordered to be paid as compensation to the injured PW-6-Chandrakant and PW-7-Suryakant. Since the enhanced compensation was paid by accused No.1 which is said to have been withdrawn by injured-victims, for conviction under Section 307 read with Section 34 IPC, the first accused-Devraj shall undergo rigorous imprisonment for six years and six months.

17. So far as respondent Nos.3 and 4-accused Nos.2 and 3 are concerned, at the time of occurrence, they were not armed. Accused Nos.2 and 3 are alleged to have attacked the injured with fist and kicked and with sticks. Considering the facts and circumstances of the case and the evidence on record, we are not inclined to interfere with the acquittal of accused Nos.2 and 3 under Section 307 read with Section 34 IPC. So far as conviction under Section 323 read with Section 34 IPC, the High Court took into consideration that accused No.2-Ashish was nineteen years old at the time of occurrence and accused No.3-Balaji was thirty-eight years old and keeping in view their age and family circumstances and that they were not having criminal antecedents, the High Court thought fit to reduce the sentence of imprisonment from six months to the period already undergone by them. Since accused Nos.2 and 3 were not armed with the deadly weapons, we are not inclined to interfere with their acquittal under Section 307 read with Section 34 IPC and the reduction of sentence of imprisonment under Section 326 read with Section 34 IPC.

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- A 18. In the result, the impugned judgment of the High Court dated 12.07.2018 in Criminal Appeal No.11 of 2016 is set aside. For conviction under Section 307 read with Section 34 IPC, the second respondent-accused No.1-Devraj is sentenced to undergo rigorous imprisonment for six years and six months and the appeal is partly allowed. The acquittal of respondent Nos.3 and 4-accused Nos.2 and 3 under Section 307 read with Section 34 IPC is affirmed and the judgment of the High Court convicting them under Section 326 IPC read with Section 34 IPC and reducing the sentence of imprisonment imposed upon accused No.2 and 3 to the period already undergone is also affirmed and the appeal qua respondent Nos.3 and 4-accused Nos.2 and 3 is dismissed. So far as
- B the fine amount imposed upon the accused and the direction of the High Court to pay the compensation to the injured under Section 357 Cr.P.C. is maintained.
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19. The accused No.1-Devraj is directed to surrender within four weeks from today to serve the remaining sentence failing which, he shall be taken into custody.