

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AURANGABAD

CRIMINAL REVISION APPLICATION NO. 273 OF 2003

1] Bhika s/o Vitthalrao Muley,
age 39 years, occ. Agril.,

2] Mohan s/o Vitthalrao Muley,
age 36 years, occ. Agril.,

Both r/o Bachegaon,
Tq. Ghanasavangi, Dist. Jalna

...Applicants

VERSUS

The State of Maharashtra

...Respondent

.....
Shri Ram S. Shinde-Barolkar, advocate for applicants
Shri S.G.Chincholkar, advocate for respondent/State
.....

CORAM : V.M.DESHPANDE, J.

DATED : 6th August, 2015

ORAL JUDGMENT :-

1] By the present Revision, the applicants are challenging their conviction and consequent sentence imposed upon them by the learned Judicial Magistrate, First Class, Ambad, dated 28.6.1993 in Regular Criminal Case No. 29 of 1986, together with the judgment and order passed by the Additional Sessions Judge, Jalna on 23.10.2001, by which the learned lower appellate court dismissed the

Criminal Appeal No.23 of 1993 filed on their behalf.

2] The prosecution case, as emerged during the course of trial, can conveniently be stated herein under : -

PW 1-Narayan and PW 3-Shankar are father and son. Narayan lodged a first information report with police station on 24.10.1985 in respect of the incident that occurred in the morning hours of the same day. The first information report is at Exh.31. The first information report was disclosing commission of a cognizable offence, therefore, an offence was registered against the present applicants and other four persons.

Deorao Rajurkar (PW 11) in the year 1985 was attached to police station Gondi as Police Sub-Inspector. He received the investigation of the crime. After receiving the case papers, he immediately visited spot of the occurrence. Spot panchanama was drawn. It is at Exh.46. He also recorded statements of the witnesses. Accused persons were arrested by him. After completion of usual investigation, he filed charge sheet before the court of law.

3] In order to bring home the guilt of the accused persons, during the course of the trial, the prosecution has examined in all eleven witnesses, including injured PW 1-Narayan and another injured PW 3-Shankar. Their brother PW 6-Bhagwat and independent witnesses PW 4-Shaikh Sardar and PW 5-Bhimrao Mule.

4] Learned trial court, though framed charge against the present applicants and other accused, for the offences punishable under Sections 148, 324 r/w 149 of the Indian Penal Code, after evaluation of the prosecution case, acquitted all the accused including the present applicants from the said charge.

However, the present applicants were convicted by the learned trial court for the offence punishable under Section 324 of the Indian Penal Code and they were directed to suffer rigorous imprisonment for six months and to pay fine of Rs.500/-, in default to suffer rigorous imprisonment for three months.

Though the other accused persons were acquitted by the learned Magistrate, the State preferred not to file appeal against their acquittal.

Against their conviction, the present applicants preferred an appeal before the learned Sessions Judge. The said appeal was registered as Criminal Appeal No. 23 of 1993. The learned lower appellate court, however, dismissed the said appeal. Hence, present Revision was preferred.

5] It would be useful to point out here, at the out set, that there was huge delay of about 569 days in preferring the present Revision before this court.

Application bearing No.1588 of 2003 was preferred by the present applicants before this court for condonation of delay. The said application is dated 12.8.2003. In the said application, it has been stated that since the applicants have surrendered, no affidavit can be filed to the said application. Thus, it is clear that at least on

12.8.2003, the present applicants were behind the bars.

The delay was condoned. This court, on 17.10.2003 granted bail in favour of the present applicants. From the record, it appears that the release warrant was given by the learned Magistrate to the Central Jail, Aurangabad vide Outward No.2132 of 2003 on 20.10.2003. Thus, at least from 12.8.2003 till 20.10.2003 the applicants were in jail.

6] From the evidence of PW 1-Narayan and PW 3-Shankar, they were assaulted by the present applicants by means of axe and sword.

PW 2 is Dr. Prashant Bal. On 24.10.1885 he was at Tirthpuri Primary Health Center as a Medical Officer. On the said day, he examined PW 1-Narayan. On examination, he found following injuries.

- “ 1) Incised wound over the forehead 1” long $\frac{1}{4}$ deep $\frac{1}{4}$ width at right lateral side. Nature of injury was simple caused by may be by sharp object or by hard and blunt object age of injury is fresh.
- 2) Incised wound of $\frac{1}{2}$ ' long $\frac{1}{2}$ ' deep and $\frac{1}{4}$ ' width at midth of the forehead simple in nature caused by sharp or hard and blunt object age fresh.
- 3) Incised wound 1” long $\frac{1}{4}$ deep $\frac{1}{4}$ ' width on the left lateral side of forehead. Sharp and by hard and blunt object simple in nature fresh in age.
- 4) Abrasion $\frac{1}{2}$ ' long x width over right forearm. Simple in nature caused by hard and blunt object age fresh.
- 5) Abrasion $\frac{1}{2}$ ” x $\frac{1}{2}$ ” over right deltoied (Right shoulder, simple, sharp and hard blunt object, age fresh.”

He also examined PW 3-Shankar to notice following injuries on his person.

- “ 1) Incised wound at right thumb base.
- 2) 1” deep bones expose $\frac{3}{4}$ ” width, wound covering all the base of the thumb. Simple in nature, sharp or hard and blunt object age fresh.
- 3) Contusion lacerated wound over the left side of head i.e. parietal region of the head 1”x1/2”x1/4” in size, simple, sharp and hard and blunt object. Age fresh.
- 4) This patient is also referred to Civil hospital Jalna for doubtful cerebral bone fracture, dislocation. “

Though in the evidence Dr. Bal (PW 2) has stated that PW 3-Shankar be referred to the Civil Hospital, Jalna for doubtful cerebral bone fracture dislocation, however, it is not the prosecution case that any such fracture was noticed.

7] The evidence of the prosecution witnesses, in so far as injuries suffered to them and the authorship as they attributed to the present applicants, in my view, cannot be re-appreciated in the present Revision, in view of the cogent and consistent evidence of these two injured.

8] The question, that falls for consideration of this court is, as to whether the conviction, as imposed upon them by the court below for the offence punishable under Section 324 of the Indian Penal Code, can be sustained in the eye of law.

Section 324 of the Indian Penal Code reads thus : -

“ **324. Voluntarily causing hurt by dangerous weapons or means**—Whoever, except in the case

provided for by Section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any substance or by means of any substance which it is deleterious to the human body to inhale, to swallow or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

The bare reading of the afore said provision shows that for securing the conviction for the offence punishable under Section 324 of the Indian Penal Code, the prosecution is obliged to prove that the injury is caused by means of dangerous weapon. Therefore, the prosecution was under obligation to prove that the injury is caused by the weapons which are produced before the court. It was but obligatory on the part of the prosecution to prove the identity of such weapons.

9] In that behalf, it would be useful to refer to the portion appearing in the examination-in-chief of PW 1-Narayan, which is as under : -

“ Now I am shown the weapons i.e. two axes, the axe with which I was beaten was Farshi axe and not these axes.”

Thus, the weapon which was produced before the court by the prosecution with the case that it was the said weapon by which the injury was caused to PW 1-Narayan, was not identified by the injured himself.

Further, when the doctor was in the witness box, the weapons were not shown to him for ascertaining his view as to

whether the injuries noticed by him can be caused by such weapon.

Further, all the injuries on both the injured were simple in nature.

10] Since the prosecution has failed to prove the identity of the weapons, in my view, the conviction as imposed upon the applicants by the courts below for the offence punishable under Section 324 of the Indian Penal Code cannot sustain and has to be set aside.

However, looking to the injuries found on the person of the injured, in my view, instead of conviction the applicants can be convicted for the offence punishable under Section 323 of the Indian Penal Code. The maximum punishment for the offence punishable under Section 323 of the Indian Penal Code is one year. As observed in the preceding paragraph, the present applicants were in jail for two months.

11] In that view of the matter and looking to the fact that the incident has occurred on 24.10.1985, it is my view that the applicants should not be sent in jail. That leads me to pass following order.

O R D E R

(i) Criminal Revision Application is partly allowed.

(ii) The judgment and order of conviction, passed by the Additional Sessions Judge, Jalna on

23.10.2001, in Criminal Appeal No.23 of 1993 is quashed and set aside. Instead, the applicants are convicted for the offence punishable under Section 323 of the Indian Penal Code and they shall suffer the sentence, to the extent of period they have already undergone.

(iii) There shall be no change in the fine amount.

(V.M.DESHPANDE, J.)

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