

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 523 OF 1995

Baban Parasha Sonavale. ... Appellant.
Versus
The State of Maharashtra. ... Respondent.

WITH

CRIMINAL APPEAL NO. 436 OF 1995

Shekhar Maruti Adhikari & anr. ... Appellants.
Versus
The State of Maharashtra & ors. ... Respondent.

WITH

CRIMINAL APPEAL NO. 418 OF 1995

Bajya @ Shankar Ratilal Srhivasta & anr.... Appellants.
Versus
The State of Maharashtra. ... Respondent.

Mr. Bhavesh Thakur i/b. Mr. S.R. Pasbola, advocate for appellants in
Appeal No. 418 of 1995.

Mrs. Sonal Parab a/w. Mr. B.S. Deshmukh, advocate for appellants in
Cr. Appeal No. 436 of 1995.

Mr. A.R. Pitale, advocate for respondent Nos. 2, 3, 4 in Cr. Appeal No.
436 of 1995.

Mrs. A.A. Mane, APP for State.

Mr. S.V. Dhole, PSI, Shahpur Police Station, Thane-Rural.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : DECEMBER 18, 2015

P.C.:

1 Heard respective Counsel and the learned APP for State.

2 This Court had issued non-bailable warrant on 9/12/2015. Today in the morning the PSI of Shahapur Police Station has initially filed a report that non-bailable warrants, which he had received on 14/12/2015 could not be executed as the appellants were not found at home. When the matter was called out today, Advocate Mrs. Sonal Parab appeared for the appellants in Criminal Appeal No. 436 of 1995 and submitted that the appellants had contacted her and she had asked the appellants to remain present before the court, as non-bailable warrant was issued.

3 Today in the afternoon session, PSI of Shahapur Police Station has executed the non-bailable warrants and has produced all the three appellants before this Court. Hence, the appellants are present before the Court.

4 The appeal is heard on merits. It appears from the record that in the present case all the accused/appellants were arrested on 12/6/1993. They were under-trial prisoners. By Judgment and Order dated 19/6/1995, the appellants herein were convicted by VI Additional Sessions Judge, Thane. They were held guilty for offence punishable under Section 147, 148, 149, read with Section 307, Section 448 read with Section 34 of the Indian Penal Code. For offence punishable under Section 147 of the IPC, they were sentenced to suffer R.I. for one year and to pay fine of Rs. 100/- each I.d. to suffer R.I. for 15 days. For offence punishable under Section 148 of the IPC, they were sentenced to suffer R.I. for two years and to pay fine of Rs. 200/- each I.d. to suffer R.I. for one month. For offence punishable under Section 307 read with Section 149 of the Indian

Penal Code, the appellants were sentenced to suffer R.I. for 7 years and to pay fine of Rs. 2,000/- each I.d. to suffer R.I. for six months. For offence punishable under Section 448 read with Section 34 of the IPC, the appellants were sentenced to suffer R.I. for one month and to pay fine of Rs. 100/-each I.d. to suffer R.I. for 15 days. Hence, the appeals.

5 During the pendency of the appeals, Accused No. 2 Sunil Laxman Lime @ Lihe has expired on 9/9/2015 and Accused No. 5 Baban Parshuram Sonavale has expired on 28/7/2002. Hence, Criminal Appeal No. 418 of 1995 filed by Accused No.2 Sunil Laxman Lime @ Lihe and Criminal Appeal No. 523 of 1995 filed by accused No. 5 Baban Parshuram Sonavale stand abated.

6 The complainant is represented by advocate Mr. Pitale. Upon perusal of evidence and more particularly, the evidence of P.W. 7 who has proved the medical case papers of the victims i.e. the complainants, it appears that the prosecution has failed to establish

the charge under Section 307 of the Indian Penal Code. The charge was framed against the accused initially under Section 326 of the Indian Penal Code. The charge under Section 307 read with Section 34 of the IPC was framed in the alternative.

7 This Court is of the opinion that the accused/appellants deserves to be acquitted of the offence punishable under Section 147, section 148, section 448 read with section 34, Section 307 read with Section 149 of the Indian Penal Code and deserves to be convicted under Section 326 read with Section 34 of the Indian Penal Code.

8 In view of this, for the reasons to be followed, following operative order is passed :

ORDER

- (i) The appeals are partly allowed.
- (ii) The appellants herein are acquitted of the offence punishable under Section 147, Section 148, Section 448 r/w. Section 34, Section 307 r/w. Section 149 of the Indian Penal Code. However, the

appellants are convicted of the offence punishable under Section 326 read with Section 34 of the Indian Penal Code. The appellants are sentenced to the period already undergone. However, the sentence of fine is enhanced to Rs. 7000/- each I.d. to suffer R.I. for 3 months, for the offence punishable under Section 326 read with Section 34 of the Indian Penal Code.

(iii) The appellants shall pay the fine amount before the Sessions Court within 8 weeks from today.

(iv) Upon failure to deposit the amount within 8 weeks, the appellants shall be taken into custody for serving default sentence.

(v) Upon deposit of the fine amount as mentioned above, out of the fine amount of Rs. 21,000/-, the victims shall be paid the whole amount of Rs. 21,000/-, as the appellants have already paid fine for the offence punishable under Section 307 read with Section 149 of the Indian Penal Code. Out of the fine amount of Rs. 21,000/-, the Sessions Court shall give the amount of Rs. 12,000/- to Santosh Shinde and the rest of the amount be given to both the injured i.e. Vijay Bhagat and Mohan Shetty equally i.e. Rs. 4,500/- each.

(vi) The bail bonds stand cancelled.

(vi) The Sessions Court shall release the appellants forthwith if not required in any other offence.

(vii) Criminal Appeal No. 418 of 1995 filed by Accused No.2 Sunil Laxman Lime @ Lihe and Criminal Appeal No. 523 of 1995 filed by accused No. 5 Baban Parshuram Sonavale stand abated.

(viii) Writ be issued forthwith.

9 The appeals are disposed of accordingly.

The parties to act on the authenticated copy of this order.

(SMT. SADHANA S. JADHAV,J)