

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.147 OF 2015

DHANRAJ ISHWAR GAWALI**Age 37 yrs, Occupation Nil,****Residing at Darashnagar,****Kalewadi, Pune****(Presently in Yerawada Jail,****Pune)****.. Appellant***Versus***THE STATE OF MAHARASHTRA****(Through Sangvi Police Staion)****.. Respondent**

Mr. Satyavrat Joshi, Advocate for the appellant.

Mrs. Anamika Malhotra, APP for the Respondent State.

CORAM : ABHAY M. THIPSAY, J.**DATED : 23rd APRIL, 2015**

ORAL JUDGMENT :-

1 This Appeal is directed against the judgment and order dated 22nd January 2015 delivered by the Addl. Sessions Judge, Pune in Sessions Case No.409 of 2014, convicting the appellant who was the sole accused in the said case, of an offence punishable under section 307 of the IPC, and sentencing him to suffer RI for 7(seven) years, and to pay a fine of Rs.5,000/- in default to suffer RI for 3(three) months.

2 The prosecution case, as put forth, before the trial court, may briefly be stated thus :-

The appellant and Raju Chandanshive (PW 2) were known to each other. There used to be quarrels between the appellant and the said Raju, and the appellant had threatened to kill Raju. The appellant's mother Suman (PW 1) had asked Raju to go to reside at the village of the parents of his wife, and accordingly, Raju had gone to reside at Chincholi, Taluka Pandharpur. On 2nd April 2014, Raju had come to Pune to meet his mother. He stayed in the house of his mother for one day. On 3rd April 2014, at about 7.00 p.m, while moving on the road, he met the appellant. The appellant asked Raju to come to the river bed by the bike, which Raju was having. Raju refused. The appellant thereupon took out a razor blade from his pocket, and gave two blows with it to Raju on his abdomen. Raju started running towards police station to save himself. The appellant started chasing him, but while running, he fell down. Raju rushed to the police outpost, but there was nobody present there. Raju, therefore, left the police outpost, and was standing on the road where he met his friend Bandu Kadam (PW 3), who was passing from there. Raju narrated the incident to Bandu who informed about it to Raju's mother Suman (PW 1). Suman reported the matter to the police by dialing number '100'. Then, Raju, Suman and Bandu Kadam went to YCM hospital by rickshaw. Suman lodged a report with the police which was treated as the First Information Report. On the next day i.e. on 3rd April 2014, the statement of Raju was recorded by the police.

Raju was admitted in the hospital for about 3 to 4 days. The injuries sustained by him were stitched.

In the course of investigation, the clothes of Raju which were soaked with blood, were taken charge of. The razor blade used in the commission of the offence was recovered, pursuant to the information disclosed by the appellant.

3 In order to establish its case, the prosecution examined totally 7 witnesses during the trial, three of whom have already been mentioned above. One Sahebrao Dhundhale was examined as the fourth witness for the prosecution. He is a panch in respect of the seizure of the clothes of the appellant, and the pointing out of the spot of incident by the appellant. He is also a panch in respect of the disclosure statement made by the appellant, and the recovery of the razor blade pursuant to the said statement. The fifth witness is Dr. Rajendra Pote who had examined and treated Raju after he had been brought to YCM hospital. The 6th witness Ganesh More is a panch in respect of the arrest panchnama, and the seventh witness Sachin Tadakhe, a Sub-Inspector of Police is the Investigating Officer in the matter.

4 I have heard Mr.Satyavrat Joshi, the learned counsel for the appellant. I have heard Mrs.Anamika Malhotra, the learned APP for the State.

5 After the admission of the appeal, the appellant applied and argued for suspension of the substantive sentence imposed upon him during the pendency of the Appeal. When the

application made by the appellant, for that purpose, was being heard, from the submissions made by the learned counsel for the applicant in the course of hearing, it was thought desirable to hear the Appeal itself, finally. The learned counsel for the appellant submitted that, in that case, he would not press the application for suspension of the sentence and the release of the appellant on bail, pending the final disposal of the Appeal. By consent of the learned APP, therefore, the Appeal was heard finally.

6 I have carefully gone through the evidence of the injured Raju. I have also gone through the evidence of Suman and Bandu Kadam.

7 The learned Addl. Sessions Judge believed the evidence of these witnesses, and held the appellant guilty of the alleged offences. The appreciation of evidence of these witnesses as done by the learned Addl. Sessions Judge, appears to be substantially correct.

8 Raju has clearly implicated the appellant. He and the appellant knew each other. The evidence of Raju is corroborated by the evidence of not only of Suman and Bandu Kadam, but also by the medical evidence. Thus, that appellant indeed assaulted Raju with a razor, causing injuries to him, cannot be doubted.

9 It is not necessary to make a detailed analysis of the evidence, in that regard, in view of the concession made by the learned counsel for the applicant. As a matter of fact, this concession was made while arguing the application for suspension

of sentence made by the appellant, and it is because of this concession that it was decided to take up the Appeal for final hearing expeditiously, and out of turn. The learned counsel for the appellant submitted that he was not disputing the incident i.e. *that the appellant had assaulted Raju, and had inflicted injuries on him with a sharp edged weapon*, but that his contention was *that the facts proved, do not amount to an offence punishable under section 307 of the IPC*. Thus, his emphasis is only on *what* offence the appellant can be said to have committed on the basis of the facts that were proved before the trial court.

10 As aforesaid, in view of this concession, it is not necessary to discuss the evidence of Raju, Suman and that of Sachin Tadhake (PW 7), the Investigating Officer in details, except observing that their evidence satisfactorily establishes the fact that the appellant assaulted Raju with a sharp weapon and caused injuries to him; and that, the finding recorded by the learned Addl. Sessions Judge, in that regard, is proper and legal.

11 The question that now remains to be decided is whether the appellant can be said to have committed an offence punishable under section 307 of the IPC.

12 A perusal of the impugned judgment shows that the learned Judge held the offence committed by the appellant to be one punishable under section 307 of the IPC on the basis of the injuries that were caused to Raju as a result of the assault. It would be necessary, therefore, to first examine the evidence of Dr. Rajendra Pote (PW 5).

13 Dr.Pote states that Raju was brought to the YCM hospital at about 8.30 p.m on 3rd April 2014, and that, when he examined Raju, he found the following injuries.

1 C.L.W over the abdomen extending from right hypochondrium to the level of umbilical size about 7 inches x 1 inch x ½ inch skin with lateral inch x 0.5 inch.

2 C.L.W over right chest wal. At the level of 9th rib, size 3 inch x 0.75 inch x 0.5 inch.

14 According to Dr.Pote, there were no other injuries on the body of Raju. Undoubtedly, Dr. Pote has said the injuries to be 'dangerous to the life', but the weight of this opinion goes away in view of the admission given by Dr.Pote in the cross-examination to the effect that he could not opine whether the injuries in question were dangerous to life, as he had not gone through the treatment papers. The matter, therefore, needs to be examined more deeply, and the injuries cannot be termed or accepted as 'dangerous to life' merely because of such an assertion by Dr.Pote in his examination in chief.

15 Raju was conscious and well oriented when he was taken to hospital. He was, at that time, under the influence of alcohol. The evidence of Raju shows that after he had sustained injuries, he started running away and rushed to the police outpost. When he did not find any policemen in the police outpost, he came out and was standing on the road. He was taken to the YCM hospital by rickshaw, and as aforesaid, he was fully conscious and well oriented at that time. He was discharged from the hospital after about 3 to 4 days.

16 Dr.Pote admitted in his cross-examination that in the injury certificate that had been issued, they were not categorized or classified either as 'simple' or as 'grievous'.

17 Considering the entire medical evidence and the condition of Raju after the assault, that he never lost consciousness after the assault, even after having run for quite some time, and that, he was discharged from the hospital within about 3 to 4 days, it would be difficult to conclude from the injuries caused to Raju, that 'grievous hurt' was caused to him, or that the injuries were such so as to 'endanger his life', in the absence of medical evidence. It may be recalled that though Dr.Pote had asserted in the Examination-in-chief that the injuries were dangerous to life, the value of this assertion is washed out by his admission that he was not competent to opine in that regard, not having gone through the treatment papers.

18 It is in this context, it needs to be examined whether the appellant can be attributed the requisite *mens rea* so as to hold him guilty of an offence punishable under section 307 of the IPC. In other words, it needs to be examined whether the appellant had assaulted Raju with such intention, and/or such knowledge, as would be required in case of an offence punishable under section 302 of the IPC. This has to be judged on the basis of various relevant factors, as may be revealed from the evidence.

19 In her cross-examination, Suman has admitted that the appellant and Raju were friends, that they used to quarrel with each other and would again become friends.

20 It is nobody's case that the appellant had kept a watch on Raju, or that he was even aware of Raju having come to Pune on the previous day. Appellant and Raju had met each other accidentally.

21 Undoubtedly, Suman and Raju both had stated that the appellant had threatened to kill Raju; and according to Suman, this was the reason behind her asking Raju to go to the village of his wife's parents. However, in the cross-examination, she admitted that Raju was addicted to liquor, and that, in order to enable him to get rid of that addiction, he had been sent to his wife's parents.

22 In my opinion, the requisite intention or even the knowledge to bring the offence committed by him within the penal provisions of section 307 of the IPC, cannot be attributed to the appellant. In fact, that is not the finding of the learned Addl. Sessions Judge also. The learned Additional Sessions Judge has held the offence to be one punishable under section 307 of the IPC *only on the basis of the injuries sustained by Raju.* The learned Judge was of the view that the injuries were sufficient to cause death in the ordinary course of nature, and that from the nature of the injuries, the intention to cause death could be inferred. This conclusion was arrived at by him without the support of any medical evidence.

23 Though the injuries are on the vital part of the body, considering the totality of the circumstances, and more

particularly, since the injuries are not proved to be so serious so as to endanger human life, it is not possible to hold that the offence committed by the appellant would be one punishable under section 307 of the IPC. The weapon used for the assault is also not a deadly weapon, and an ordinary razor blade. It may be recalled that, - going by the evidence - the meeting between the appellant and Raju was accidental. All these factors negative the theory of the appellant having entertained an intention to cause death of Raju while assaulting him - or at least create a reasonable doubt about it.

24 I have carefully considered as to what offence the appellant can be said to have committed. Since it is not clear that the injuries caused to the appellant would, singly or collectively fall within any of the eight categories mentioned in section 320 of the IPC, the appellant ought to have held guilty only of an offence punishable under section 324 of the IPC.

25 Mr.Joshi, the learned counsel for the appellant submitted that in that case, the sentence of the appellant, be considerably reduced.

26 I have considered this aspect of the matter.

27 Mr.Joshi submitted that the appellant is a married person, having three daughters aged, 15 years, 7 years and 4 years. This appears to have been submitted before the trial court also. The appellant appears to be from a lower strata of the society. There are no antecedents. The wife of the appellant was present on 15/04/2015, and was heard in the matter. Though the

injuries sustained by Raju were on a vital part, they are not proved to be falling within any of the eight categories mentioned in section 320 of the IPC. There is nothing to show that victim Raju has suffered any permanent disability or incapacity due to the said injuries or that his normal life and day to day activities are affected, in any manner, on account of the assault.

28 After considering all the relevant aspects of the matter, I am inclined to allow the Appeal by converting the conviction of the appellant from that of an offence punishable under section 307 of the IPC to the offence punishable under section 324 of the IPC.

29 In my opinion, the substantive sentence of Rigorous Imprisonment for 2(two) years, and a fine of Rs.25,000/-, substantial portion of which should be ordered to be paid to the victim Raju, as compensation would meet the ends of justice.

30 In the result, the Appeal is partly allowed.

31 The Judgment and order of conviction of the appellant with respect to the offence punishable under section 307 of the IPC, and the sentence imposed upon him therefor, is set aside.

 Instead, the appellant is convicted of an offence punishable under section 324 of the IPC, and is sentenced to suffer Rigorous Imprisonment for 2(two) years, and to pay a fine of Rs.25,000/-, in default to suffer RI for 6(six) months.

32 If the fine is realized, an amount of Rs.24,000/- therefrom shall be paid to the injured/victim Raju Chandanshive as compensation.

33 The amount of fine, if deposited by the appellant pursuant to the impugned Judgment and Order, shall be adjusted towards the fine that he would be required to pay in accordance with this order.

34 The Appeal is disposed of accordingly.

(ABHAY M.THIPSAY, J)