

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRI. REVISION APPLICATION NO. 349 OF 2014

Liyakat Shaukat Mokashi

... Appellant/
Applicant.

V/s.

The State of Maharashtra
(at the instance of MIDC Police Station)

... Respondent.

Mr. Prashant M. Patil, Advocate for the Appellant/Applicant.
Ms. V.S.Mhaispurkar, A.P.P. for the State.

**CORAM : M.L.TAHALIYANI,J.
DATE : 09th JUNE, 2015**

P.C. :

1 Admit. Heard finally.

2 Heard the learned counsel appearing for the Appellant / Applicant and the learned additional public prosecutor for the State of Maharashtra.

3 The applicant has been convicted for the offence punishable under section 307 of the Indian Penal Code and is sentenced to suffer R.I. for a period of five years and to pay a fine of Rs.5,000/-. It was directed by the learned trial Judge that an amount of Rs. 2000/- shall be paid to the injured -

Mangesh Dicholkar, if the fine was recovered. It is this order of the Ad-hoc Assistant Sessions Judge which was challenged before the Additional Sessions Judge. The learned additional Sessions Judge has rejected the appeal filed by the applicant. Hence, the present revision application is moved, challenging the order of the additional Sessions Judge.

4 During the course of hearing it was submitted by the learned counsel Mr. Prashant Patil appearing for the Applicant that this court may consider whether conviction under section 307 of the IPC could be maintained. It is further submitted that even if the evidence is taken to be true and correct, at the most the applicant could be guilty of the offence punishable under sections 326 of the IPC.

5 I have gone through the evidence of PW-2 injured person and PW-6 eye witness. In fact it is not clear from the evidence of both the witnesses as to why the incident had occurred. It may be mentioned here that to prove the offence under section 307 of the IPC, the respondents were under obligation to establish that the applicant had intention to kill the PW-2 or he had intention to cause bodily injury to PW-2, which was sufficient to cause death in the ordinary course of nature.

6 The injured victim was a superior officer of the applicant and he was engaged in the office work at the time of the incident. The incident appeared to have occurred suddenly. As already stated, the reasons for the alleged assault are not clear. It is also necessary to be noted here that the applicant had allegedly inflicted only one blow on PW-2. It is thus clear that the applicant had no intention to kill PW-2. The applicant did not appear to have intention to cause bodily injury which could be sufficient to cause death in ordinary course of the nature. However, from the evidence of PW-1 and PW-6, it is clear that the applicant had voluntarily caused injury on the head of the PW-2 by means of Koyta, which is a weapon used for cutting. It is clear that the PW-2 had sustained fracture of the skull but he was all the time conscious in the hospital. For these reasons, I have come to the conclusion that the respondent had failed to establish that the applicant had assaulted the PW-2 with such intention and under such circumstances that had the PW-2 died, the applicant would have been guilty of the offence of murder. However, as already indicated the applicant had voluntarily caused grievous hurt by means of Koyta to PW-2. He is, therefore, found guilty of the offence under section 326 of the IPC.

7 The application is partly allowed. Conviction of the applicant under section 307 of the IPC and sentence, fine

and compensation imposed on him by the trial court Judge and confirmed by the Additional Sessions Judge, are set aside.

8 The applicant is convicted of the offence punishable under section 326 of the IPC and is sentenced to suffer imprisonment for a period already undergone by him (11 months and 26 days) and to pay fine of Rs.5000/-.

9 The revision application is accordingly disposed of.

(JUDGE)

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