

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

CRIMINAL APPEAL NO.200 OF 2005

The State of Maharashtra
through Sou. Mandakini w/o
Dharmraj Waghmare
R/o Pangaon, Tq. Kallam,
District Osmanabad

... APPELLANT
(Original Complainant)

VERSUS

Shahaji Bajirao Waghmare,
Age 23 years, Occu. Agri.,
R/o Pangaon, Tq. Kallam,
District Osmanabad

... RESPONDENT

.....
Shri A.M. Phule, A.P.P. for appellant/ State
Shri D.H. Jadhav, Advocate for respondent - not present
.....

CORAM: A.I.S. CHEEMA, J.

DATED: 7th April, 2016.

ORAL JUDGMENT :

1. Heard learned A.P.P. for the appellant/ State.
2. This appeal is by State seeking enhancement of the sentence which was passed by the trial Court. The facts in brief

are as follows.

3. On 2.9.1994, at about 9.00 p.m., at village Pangaon, Taluka Kallam, the accused committed criminal trespass by entering into the house of complainant Mandakini and causing hurt to her by using sword. The accused had run away after causing injury. The accused had been seeking partition.

4. The F.I.R. was registered and the offence was investigated. The sword was discovered from the house of accused. Police prepared spot panchanama. The statements of witnesses were recorded and charge sheet was filed. The Assistant Sessions Judge framed charge under Section 452, 307, 341, 504 and 506 of the Indian Penal Code. Prosecution examined the complainant as P.W.2 and her daughter Jayshree as P.W.1 to corroborate. The F.I.R. was proved. The Medical Officer P.W.3 Manik Dikale was also examined to prove the medical certificate. The panchas of the recovery and spot P.W.3 to P.W.5 turned hostile. The investigating officer was examined as P.W.7.

5. The trial Court, after considering the evidence, acquitted the accused of Sections 341, 504 and 506 of the Indian Penal Code. The accused was convicted for offence under

Section 324 of the Indian Penal Code and sentenced to suffer simple imprisonment for three months; for offence under Section 452 of the Indian Penal Code, it was directed that the accused to suffer simple imprisonment for three months and to pay fine of Rs.2000/-, in default to suffer simple imprisonment for one month. Against such sentence passed, the present appeal was filed by the State with a prayer to enhance the sentence.

6. The learned A.P.P. vehemently argued and submitted that the sentence of the accused was much inadequate. The A.P.P. submitted that, the facts of the matter spelt out an offence under Section 307 of the Indian Penal Code. The blow given on the head was by sword and actually Section 307 of the Indian Penal Code was attracted. A.P.P. submitted that, the medical certificate and the evidence of P.W.3 shows that, injury No.1 and 2, which are caused to complainant Mandakini were possible by sharp weapon and injury No.3 was caused by hard and blunt object. The injury No.1 and 2 are incised wound on right sholder while the injury No.3 - contused lacerated wound was on the head, which was bone deep. The learned A.P.P. submitted that, keeping this in view, the sentence was most inadequate.

7. Going through the material available and going

through the evidence of P.W.3 Dr. Manik Dikale read with the medical certificate, A.P.P. is unable to show that any of the injuries of complainant were grievous. P.W.3 Dr. Manik Dikale has stated that the injuries were simple. It is the evidence of doctor that the injury No.1 and 2 could be caused by sword. The same were on the shoulder. Although the doctor deposed that injury No.3 was on vital part of body and if treatment would not have been given in time, death was possible, still when the trial Court recorded judgment convicting the accused under Section 324 of the Indian Penal Code, the State did not file appeal against acquittal under Section 307 of the Indian Penal Code. Now it would not be appropriate to go into the question whether Section 307 was made out if the State did not file appeal against acquittal under Section 307 of the Indian Penal Code. The trial Court, in its reasonings, proceeded on the basis that offence under Section 307 is not made out and that offence under Section 324 is made out. Accordingly, the sentence was passed. Present appeal is only regarding inadequate sentence.

8. As regards the question if sentence under Section 324 of the Indian Penal Code was insufficient, reference may be made to para 36 of the judgment. The trial Court observed as under :

"36. On hearing both sides particularly the accused in person admittedly the alleged offence was committed out of landed dispute. As such accused has no personal enmity with the victim for any other reason. The victim and accused are related to each other. I am told at the bar by learned Advocate Mr. B.R. Mane that, accused was in jail for about 11 months. Besides that, considering the fact that, accused is married person shouldering responsibility of wife and two kids and as well as he is poor agriculturist, in my opinion, no fruitful purpose would be served, if he is sent behind the bar. Considering above aspects to meet the ends of justice, I proceed to pass the following order :

ORDER

Accused is acquitted of the offences punishable under Section 341, 504 and 506 of I.P.C.

Accused is convicted of the offence punishable under Section 324 of I.P.C. and sentenced to suffer simple imprisonment of 3 months.

Accused is also convicted of the offence punishable under Section 452 of I.P.C. and sentenced to suffer simple imprisonment for 3 months and to pay a fine of Rs.2000/- in default to suffer simple imprisonment for one month.

Both the sentences to run concurrently.

Accused is entitled for set off, under Section 428 of Cr.P.C.

Out of fine realized, an amount of Rs.1500/- be paid to complainant Mandakini Dharmaraj Waghmare after appeal period.

The muddemal property sword and clothes being worthless be destroyed after appeal period."

9. Looking to the above paragraph, it is clear that the trial Court took note of the fact that the accused was in jail for

about 11 months and that the dispute arose because of property and there was no personal enmity as such. The trial Court took note of the fact that the accused was married and had wife and children and that he is a poor agriculturist. Thus, it exercised its discretion.

10. Unless it can be shown that the discretion exercised was illegal/ arbitrary or sentence is frivolous, interference will not be appropriate. In the facts of the matter, no such grounds are made out looking to reasons recorded by trial Court.

11. For such reasons, I do not find any substance in the appeal. The appeal is dismissed.

(A.I.S. CHEEMA, J.)