

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

CRIMINAL REVISION APPLICATION NO.314 OF 2003

Ratnakar s/o Dattatraya Jawale,
Age 40 years, Occu. Agriculture
R/o Kamkheda, Taluka Renapur,
District Latur

..Applicant

Versus

1. The State of Maharashtra,
2. Hanmant s/o Dhondiba Kasmale,
Age 65 years, Occu. Agriculture,
R/o village Kamkheda,
Taluka Renapur

..Respondents

Mr C.R. Deshpande, Advocate for applicant
Mr N.T. Bhagat, A.P.P. for respondent No.1
Mr S.R. Choukidar, Advocate for respondent No.2

CORAM : N.W. SAMBRE, J.

DATE : 22nd August 2016

ORAL JUDGMENT

1. The present applicant was convicted by the learned Chief Judicial Magistrate, Latur vide judgment and order dated 14th December 2001 for offence punishable under Section 324 of the Indian Penal Code and was sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs.2,000/-, in default to suffer rigorous imprisonment for one month. Compensation of Rs.1,500/- was ordered by the Court under Section 357 of Cr.P.C.

2. The said judgment and order of conviction was questioned by the present applicant through Criminal Appeal No.43 of 2001 before the Ad hoc Additional Sessions Judge, Latur, who has confirmed the findings recorded by the learned Magistrate.

3. The prosecution story appears to be, Mainabai, a daughter of one Hanmant was residing opposite to the house of present applicant. Applicant's brother Navnath tried to flirt with Mainabai in the early morning hours at 6.30 on 26th December 1997, which fact was reported by Mainabai to her father Hanmant. Hanmant went to question about his conduct and the present applicant, brother of Navnath fetched one axe from his house and gave its blow on the left elbow of Hanmant resulting into causing incise wound. As such, crime in question is registered. The investigation is done and charge sheet is filed in the matter.

4. So as to substantiate the claim for bringing on the guilt of the accused, the prosecution has examined in all five witnesses including that of P.W.1 Hanmant at Exh.28, P.W.2 Tanaji at seizure memo at Exh.34, P.W.3 Mainabai at Exh.36, an eye witness to the incident. P.W.4 Dr. Parmeshwar on the injury and treatment given to Hanmant, at Exh.41, the Investigating Officer to Crime No.191 of 1997 at Exh.43.

5. The first information report was proved by Hanmant whereas the testimony of doctor has supported the injuries suffered by Hanmant. P.W.3 Mainabai deposed in support of the assault by Ratnakar and the earlier incident of Navnath, resulting into holding of her hand on same day morning. The seizure of the axe is proved pursuant to the testimony of panch witness P.W.2 Tanaji.

6. In this background, Mr Deshpande, learned Counsel for the applicant would submit that injury suffered by Navnath in the incident in question is not taken into account by both the Courts below. He would then submit that actual incident has taken place elsewhere and the accused thereof is also different, as according to him, it is brought on record that the incident has taken place in front of Hanuman temple, other than the place where it is alleged in spot panchnama. Learned Counsel would then invited attention of this Court to the evidence, so as to prevail upon this Court to appreciate the sufferance of injuries and particularly, weapon used to urge that the offence under Section 324 of Indian Penal Code is not made out by satisfying the ingredients thereof. Learned Counsel, in addition would urge that the incident as is claimed to have happened is almost about 19 years back, at which time age of the applicant was about 36 years. Now, the applicant who is an agriculturist is already blessed with grandchildren and the applicant has already undergone a week's punishment, apart from the fine and the compensation that he has deposited. He would then submit that the applicant be released on admonition or in view of provisions of Section 360 of Cr.P.C.

7. Learned A.P.P., who is assisted by Mr Choukidar, learned Counsel for the victim would support the judgment and submits that if the cumulative effect of the evidence as is analysed by the Courts below is taken into account, the only inference that can be drawn is that of conviction of the applicant under Section 324 of Indian Penal Code. Learned A.P.P. submits that absence of medical injury

certificate of Navnath has been rightly appreciated by the learned Courts.

8. At the outset, it is required to be noted that upon perusal of the evidence of the respective witnesses, it can be appreciated that they have stood by the prosecution story as has been narrated in the first information report Exh.29, the contents of the first information report were duly proved by examining the main witness Hanmant, victim of the incident. Apart from above, the recovery of weapon i.e. axe used by the present applicant is under the seizure panchnama Exh.35, which was also proved in the evidence of P.W.2 Tanaji. The evidence of P.W.3 Mainabai speaks volumes about the conduct of the present applicant, who played active role and part in the commission of crime in question, particularly assaulting Hanmant with an axe on his left elbow. It is then to be noted that the Investigating Officer has also, in clear terms supported the investigation carried out by him and also brought on record the complaint lodged by Navnath and the action taken thereon. The Medical Officer P.W.4 Dr. Parmeshwar has proved the injuries suffered by the victim Hanmant and the cause of such injuries.

9. Once the eye witness Mainabai and the testimony of Hanmant speak about the involvement of the applicant in the crime in question, who has assaulted Hanmant by axe and the said testimony was not demolished in cross-examination, in my opinion, both the Courts below have rightly held that the applicant has committed offence

punishable under Section 324 of Indian Penal Code.

10. The use of axe in the commission of crime though is sought to be resisted, however, based on the non-submission of the report of Chemical Analyzer and that of non-examination of the X-ray technician, however, the evidence of the eye witnesses Mainabai and Hanmant and the evidence of P.W.4 Dr. Parmeshwar speak about the incise wound suffered by Hanmant and the cause thereof.

11. Analytical approach on the part of learned trial Court so also the appellate Court has rightly drawn conclusion of guilt of the present applicant resulting into his conviction for an offence punishable under Section 324 of Indian Penal Code.

12. In my opinion, no case for interference qua the conviction of the applicant for an offence punishable under Section 324 of Indian Penal Code is made out. As such, the findings recorded by the Courts below are confirmed.

13. This takes me to the next submission of learned Counsel for the applicant that the alleged incident has taken place some 19 years back and the applicant has undergone a week's imprisonment. According to him, during pendency of the present revision, the applicant has not indulged into any such type of offence and in view of his advanced age and his profession being agriculture, this Court while ordering, should show leniency. He would invite attention of this

Court to the judgment of Apex Court in the matter of **Pashora Singh and anr. Vs. State of Punjab**, reported in **AIR 1993 SC 1256**, so as to submit that the Court should grant benefit of Section 360 of Cr.P.C.

14. Mr Choukidar, learned Counsel for respondent No.2 - complainant and learned A.P.P. would submit that the amount of compensation and fine be increased, if the applicant is to be given benefit under Section 360 of Cr.P.C.

15. In the backdrop of above submissions, I propose to pass the following order :

ORDER

(I) The applicant herein is granted benefit of Section 360 of Cr.P.C. He shall be released on executing bond before the Probation Officer, Renapur about his good behaviour within four weeks from today, for a period of one year with one surety.

(II) The applicant shall deposit an amount of Rs.25,000/- (Rs. Twenty five thousand) towards compensation with the Probation Officer within the said period of four weeks and the Probation Officer shall forthwith transmit the said amount upon deposit, to the victim Hanmant Kasmale, resident of village Kamkheda, Taluka Renapur and shall submit compliance report to that effect to this Court.

(III) If it is noticed that the applicant has indulged in any similar type of crime or has not complied with the directions made herein above, the order of granting benefit under Section 360 of Cr.P.C. shall ceased to have any effect and the Magistrate will be at liberty to take the applicant into custody for execution of the order.

16. With above directions, Criminal Revision Application stands disposed of.

(N.W. SAMBRE, J.)

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