IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 877 OF 2015

Gangaram s/o Waman Wajir,
Age: 30 years, Occ: Agri.,
R/o. Phule Pimpalgaon,
Tq. Majalgaon, Dist. Beed. ...Appellant

versus

1. The State of Maharashtra

2. Anil Gangaram Jadhav,
Age: 50 years, Occ: Agri.,
R/o. Phule Pimpalgaon,
Tq. Majalgaon, Dist. Beed. ...Respondents

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Mr. Rajendra G. Hange, Advocate for appellant
Mr. D.V. Tele, A.P.P. for respondent No. 1
Mr. M.M. Parghane, Advocate for respondent No. 2

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CORAM : N.W. SAMBRE, J.

DATE : 9th MARCH, 2016

ORAL JUDGMENT :

The appellant-accused No.1 Gangaram Waman Wajir came to be convicted by Additional Sessions Judge, Majalgaon on 17th November, 2015 in Sessions Case No. 35/2014 for the offence punishable under section 307 read with section 34 of the Indian Penal Code and sentenced him to suffer rigorous imprisonment for seven years and pay fine of Rs.3000/-, in default to suffer simple imprisonment for six months. As a consequence, the appellant is behind the bars since then.

2. The learned Counsel for the appellant submits that, learned Sessions Court has awarded sentence of seven years and fine of Rs. 3,000/-. According to him, fine amount of Rs. 3,000/- is already paid and as against rigorous imprisonment of seven years, the appellant-accused has already undergone more than 20 months of imprisonment.

3. In the above background, learned Counsel submits that, the appellant is entitled to be released, in view of affidavit filed by the respondent No. 2-complainant Anil Gangadhar Jadhav. He would then submit that even if the offence is punishable under section 307 of Indian Penal Code, the medical evidence speaks of sufferance of only one grievous injury and simple injury. He would then invite my attention to the testimony of prosecution witness No. 6 Dr. Rupali Solanke so as to substantiate his contention and also testimony of prosecution witness No. 1-victim namely, Anil Gangadhar Jadhav, who filed complaint in the present case. The perusal of both these depositions depict that the complainant Anil claimed to have suffered incised wound, as he was beaten by the present appellant on his head by means of an axe. If evidence of Doctor in the said background is read, it is required to be noted that the following injuries i.e.

1. CLW right temporo occipital regiion, 6 x 4 c.m.
2. CLW left fronto temporal region, 3 x 2 c.m.
3. CLW left forehead near eye, 2 x 1 c.m.

were simple in nature and claimed to have been caused by hard and blunt object.

4. In the above background, learned Counsel submits that the conviction of the appellant for offence punishable under section 307 of the Indian Penal Code is required to be reassessed.

5. Learned Counsel for the complainant- Anil submits that the complainant personally present in the Court and is identified. According to him, the offence at the most could be termed to be under section 323 of Indian Penal Code and not under section 307 of Indian Penal Code. He has volunteered for compounding of the said offence in view of provisions of section 320 of Code of Criminal Procedure.

6. Learned A. P. P. has opposed compounding of offence on the ground that offence punishable section 307 of Indian Penal Code is non compoundable, for which the appellant was convicted. According to him, there is sufficient evidence against the appellant,

as such the prayer for compounding be rejected.

7. Having bestowed my thought to the submissions made, particularly in the light of evidence of P.W. 1 Anil- complainant and P.W. 6 – Dr. Rupali, it is required to be inferred that the complainant suffered simple injuries, which offence is punishable under section 323 of Indian Penal Code and appellant herein has already undergone rigorous imprisonment for more than twenty months.

The complainant, who is personally present through his Counsel has volunteered for compounding which appears to be without any influence.

8. In the above referred background, having regard to the law laid down by the Apex Court in the matter of **Ishwar Singh Vs. State of Madhya Pradesh** reported in **2009 ALL MR (Cri.) 560 (S.C.) and** in the matter of **Padmalyan & anr. Vs. Sarasan & anr.** reported in **2013 ALL MR (Cri.) 2958(S.C.)**, it will be appropriate, in my opinion, to allow the appeal. Hence I pass following order:

: O R D E R :

(a) The conviction and sentence of the appellant for offence

punishable under Section 307 of the Indian Penal Code is set aside. Instead, the appellant is convicted for the offence punishable under section 323 of the Indian Penal Code and same is compounded as prayed by the complainant.

(b) In view of the fact that the appellant has already undergone rigorous imprisonment for more than twenty months, it will be appropriate to direct that he be released forthwith on the term of imprisonment which he has already undergone, if not required in any other crime.

(c) The fine amount be paid to the complainant.

9. Criminal Appeal stands partly allowed in above terms.

[**N.W. SAMBRE, J.]**

Tupe/09.03.16