IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 52 OF 2015

Bhagwan Gopal Jamghare,
Age: 36 yrs,
R/at : Bhadval, Taluka-Karjat,
Dist. Raigad, ...Appellant
(At present in Nashik Jail) (Ori. Accused No.1)

Versus

The State of Maharashtra,
(At the instance of Neral
Police Station, Karjat) ...Respondent

WITH
CRIMINAL APPLICATION NO. 564 OF 2016
(For Bail)
IN
CRIMINAL APPEAL NO. 52 OF 2015

Bhagwan Gopal Jamghare,
Age: 36 yrs, Occu.:
Residing : Bhadval,
Tal. Karjat, Dist. Raigad, ...Applicant
(At present in Nashik Jail) (Ori. Accused No.1)

Versus

The State of Maharashtra,
(At the instance of Neral
Police Station, Karjat) ...Respondent

Mr. Aniket B. Deshkar for the Appellant/Applicant

Mr. A. S. Shitole, A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE, J.
WEDNESDAY, 3rd AUGUST, 2016

ORAL ORDER :

1. The appellant has impugned the judgment and order dated 30th December, 2014 passed by the Additional Sessions Judge, Raigad, Alibag in Sessions Case No. 37 of 2008, convicting him for the offence punishable under Section 307 of the Indian Penal Code and sentencing him to suffer RI for 5 years and to pay fine of Rs. 10,000/-, in default, to suffer RI for 1 year.

2. Learned Counsel for the appellant presses the aforesaid appeal only on the quantum of sentence and not on merits. He further submits that considering the peculiar facts of the case, in particular, the fact that the prosecution was unable to establish motive for the appellant, to assault the injured, and the medical injuries suffered by the injured, the sentence imposed on the appellant be modified and reduced to undergone sentence, which is about 1½ years.

3. Learned A.P.P submits that no interference is warranted in the sentence awarded by the trial Court, considering the facts of the case.

4. Perused the papers with the assistance of the learned Counsel for the appellants and the learned A.P.P. The incident in question took place on 28th January, 2007 at about 8:30 p.m., when the injured-Kaluram Jamghare (PW 5) was proceeding for a haldi programme, to his cousin's house. The injured-Kaluram was accompanied by his two daughters Yogita (complainant-PW 2) and Namita. According to the prosecution, when Kaluram alongwith his daughters reached near the shop of one Tukaram Ramji Patil, the appellant came and gave a blow on his head from behind. Injured-Kaluram is stated to have seen the appellant with an axe in his hand. The appellant is alleged to have assaulted Kaluram twice on his head with an axe, resulting in a bleeding injury. According to the prosecution, co-accused Gopal instigated the appellant to assault Kaluram. It is alleged that after seeing the assault, Yogita (complainant) and her sister Namita started weeping, pursuant to which, their maternal uncle, Shri Gajanan came to the spot and saw Kaluram lying in an injured condition. Kaluram was thereafter taken to the Sub-District Hospital, Karjat, where he was examined by Dr. Rajendra Atre, who gave first-aid to Kaluram and referred him to the K.E.M Hospital, Mumbai, for further

treatment. A complaint was lodged by Yogita (PW 2) with the Neral Police Station on 29th January, 2007, pursuant to which, a C.R was registered as against the appellant and his father Gopal (co-accused), alleging an offence punishable under Section 307 of the IPC. After investigation, charge-sheet was filed and the case was committed to the Court of Sessions, as the offence alleged was sessions triable. The appellant and the co-accused pleaded not guilty and claimed to be tried.

5. The prosecution in support of its case, examined 10 witnesses. PW 1 – Gajanan Jaitu Mali, brother-in-law of the injured; PW 2 – Yogita Kaluram Jamghare, complainant and daughter of the injured; PW 3 – Dilip Laxman Mhaskar, panch to the spot panchnama; PW 4- Nilesh Raghunath Mali, panch to the clothes of the appellant (hospital); PW 5- Kaluram Barku Jamghare, injured; PW 6 – Dr. Soundappan, Medical Officer, Surgeon, KEM Hospital; PW 7 – Dr. Rajendra Manohar Atre, who gave first-aid to the injured; PW 8 – API Ajay Nanasaheb Jadhavrao, the Investigating Officer, Neral Police Station; PW 9 – PSI Sudam Nana Khairmode, a panch witness; PW 10 – API Sanjay Subrao Babar, also a panch witness. After considering the evidence on record, the appellant was convicted and

sentenced as stated in para 1. Since the appeal is not being contested on merits, it is not necessary to deal in detail with the evidence that has come on record.

6. Suffice to state, that a perusal of the evidence on record, shows that the prosecution has not been able to prove motive *qua* the appellant to assault the injured-Kaluram, in view of certain admissions that have come in the cross-examination of the injured witness. The prosecution has examined PW 7 – Dr. Rajendra Atre, who gave first-aid to the injured-Kaluram and thereafter, forwarded him to K.E.M Hospital, as the injured required an urgent CT-Scan. The said doctor has brought on record the Injury Certificate. The Injury Certificate placed on record by the said doctor shows one CLW over left side parietal-occipital region. The said injury is stated to be a simple injury.

7. PW 6 – Dr. Soundappan was examined by the prosecution, to prove the medical case papers of the injured-Kaluram. PW 6 was admittedly not attached to the K.E.M Hospital, at the relevant time. His evidence shows that he was not attached to the K.E.M Hospital when the

appellant was admitted; that he had no idea as to who was the R.M.O at K.E.M Hospital at the relevant time, and that he was not acquainted with the signature of the Medical Officer, who was working in the said Hospital in the year 2007. PW 6 has brought on record the Injury Certificate of the injured, which shows that injured-Kaluram had suffered 2 CLWs.

8. It is pertinent to note, that vide the impugned judgment and order, the learned Judge acquitted co-accused Gopal, the father of the appellant, considering the discrepancies that had crept in, in the evidence of the eye-witnesses. As far as the appellant was concerned, he was consistently named by the eye-witnesses i.e. the injured-Kaluram, his daughter-Yogita (PW 1) and Gajanan, brother-in-law of the injured and as such, has been rightly convicted by the trial Court.

9. As noted earlier, the learned Counsel for the appellant does not press this appeal on merits but only on the quantum of sentence. Learned Counsel relied on the judgment of this Court, in the case of ***Bajirao s/o. Ashruba Sanap vs. State of Maharashtra***[1] in support of his submission for

1 (2007) All MR (Cri.) 756

reduction of the sentence from 5 years, to that of undergone sentence. According to the learned Counsel, the injury proved by the prosecution, through PW 7-Dr. Atre, shows that the nature of injury sustained by Kaluram was a simple injury, caused with a hard and sharp object such as axe. The evidence of PW 7-Dr. Atre shows that the injury was a simple injury and that he had forwarded injured-Kaluram to K.E.M Hospital for C.T-Scan. Admittedly, the doctor who treated the injured at K.E.M Hospital, Mumbai, was not examined. PW 6 – Dr. Soundappan was admittedly not attached to K. E. M Hospital at the relevant time and as such was not familiar with the handwriting and signature of the Doctor who issued the medical certificate. The appellant has no antecedents. It is also not disputed that the family of the injured and the appellant are related.

10. Taking into consideration all the aforesaid facts and the peculiar facts of this case, the judgment and order convicting the appellant for the offence under Section 307 stands confirmed. However, only the substantive sentence of the appellant is modified. The sentence imposed by the impugned judgment and order of 5 years RI is reduced to 3 years RI. As far as quantum of fine amount is concerned, the same is maintained i.e.

appellant to pay Rs. 10,000/- in default, to suffer RI for 1 year. From the said amount of fine, a sum of Rs. 8,000/- to be paid to the injured Kaluram under Section 357 (1) of Cr. P. C. as per clause (6) of the impugned judgment and order.

11. Appeal is partly allowed as stated aforesaid and is disposed of as such.

12. In view of the above order, nothing survives for consideration in Criminal Application No. 564 of 2016. The same stands disposed of.

13. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.