

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

Criminal Appeal No. 124 of 2002

Martand Poona Patil,
Age 46 years,
Occupation : Service,
R/o Dhule, District Dhule. .. **Appellant.**

Versus

The State of Maharashtra. .. **Respondent.**

Shri. Joydeep Chatterjee, Advocate, for appellant.

Shri. V.S. Badakh, Additional Public Prosecutor, for
respondent.

With

Criminal Appeal No. 340 of 2002

The State of Maharashtra. .. **Appellant.**

Versus

Martand Poona Patil,
Age 42 years,
Occupation : Nil,
R/o Mohadi Upnagar, Dhule. .. **Respondent.**

Shri. V.S. Badakh, Additional Public Prosecutor, for
appellant.

Shri. Joydeep Chatterjee, Advocate, for respondent.

**Coram: T.V. NALAWADE &
A.M. DHAWALE, JJ.**

Date: 24 November 2017

JUDGMENT (Per T.V. Nalawade, J.:

1) Both the appeals are filed against the judgment and order of Sessions Case No.79/2001 which was pending in the Court of learned First Ad-hoc Additional Sessions Judge Dhule. The appellant accused is convicted and sentenced for offence punishable under section 324 IPC by the trial Court when he was charged for offence punishable under section 307 IPC. To challenge the conviction and sentence the appeal is filed by the accused bearing No.124 of 2002 and the other appeal is filed by the State as the State is feeling aggrieved due to acquittal of the accused of the offence punishable under section 307 IPC. Both the sides are heard.

2) The first informant Gokul Vankhede is an Advocate practicing at Dhule. One Chandrabhagabai was his client. Chandrabhagabai had some dispute with Martand Patil, present accused. The accused had sent a notice through Advocate to Chandrabhagabai and for

Chandrabhagabai, the first informant, Advocate Vankhede had given reply to the notice. The accused approached Advocate Vankhede and expressed that he was ready to compromise the matter out of Court. Due to that one meeting was held and the compromise was reduced into writing on stamp paper and that compromise took place on 30-6-2000.

3) About 1.1/2 to 2 months prior to the date of the incident, accused approached Advocate Vankhede and expressed that he had sustained loss of Rs.10 to 15 thousand due to his intervention and he should return that amount to him. Vankhede denied that he had caused loss to the accused but the accused was not convinced.

4) On 18-3-2001 at about 12.30 noon accused came to the house of Advocate Wankhede and gave him call from outside. When Vankhede went out of the house accused gave threat by saying that if the amount was not returned to him, he would finish Vankhede. When Vankhede said that he had no concern with the matter now, he accused took out a knife from his pocket and

attempted a blow of the knife on the neck of Vankhede. Vankhede tried to avoid the blow but the blow hit on his left hand and he sustained bleeding injury. He shouted for help and then his nephew Sanjay and a friend of Sanjay, namely Dipak rushed to the spot. After seeing these two boys the accused ran away by using his cycle.

5) On 18-3-2001 itself Advocate Vankhede gave report to Dhule City Police Station and on that basis crime at CR No.57/2001 came to be registered initially for offence punishable under sections 324/506 IPC. During the course of investigation, panchanama of the spot was prepared and Wankhede produced his clothes. Vankhede was referred for medical examination and one incised wound was found on his left hand. The accused came to be arrested.

6) On 22-3-2001 while in police custody accused gave statement under section 27 of the Evidence Act and he showed willingness to produce the weapon which was kept near 'Rup-Sandhya' Bungalow. Memorandum of the statement was prepared. The accused then took the

panchas and the police to the spot and from there he produced a knife which was found concealed under the heap of stones. There were blood stains on this knife and it came to be seized under panchanama.

7) Statements of Chandrabhagabai, the client of Advocate Vankhede, and the aforesaid two witnesses came to be recorded. After completion of investigation, charge-sheet came to be filed for offence punishable under section 307 of the Indian Penal Code. Charge was framed for this offence to which the accused pleaded not guilty. Prosecution examined in all 9 witnesses to prove the offence. The accused took defence of total denial. The trial Court has believed the first informant but the trial Court has held that intention of murder cannot be gathered from the circumstances and the trial Court has convicted the appellant for offence punishable under section 324, Indian Penal Code.

8) Vankhede (PW-1) has given evidence which is mostly in accordance with the contentions made in the F.I.R. He has given evidence that the accused had created

dispute and he was asking for giving Rs.10,000/- to him. He has given evidence on the incident which took place on 18-3-2001 at 12.30 p.m. In the examination-in-chief he has tried to say that when the talk was going on, his nephew Sanjay came out of the house and along with him there was Dipak, a friend of Sanjay and in their presence the accused took out a knife from his pocket and made an attempt to give blow of the knife on his neck. He has deposed that he then shouted loudly and the aforesaid two boys rushed forward and then the accused ran away. He has given evidence that after the incident he, his nephew and the friend of the nephew, Dipak Gawale went to Police Station where report at Exhibit 21 was given. The record like the notice received by his client, the reply given by him is also produced in the Court. The clothes which were having blood stains and which were produced by Advocate Wankhede before police are identified by him in the Court. The accused has not disputed that there was such exchange of notices and then Advocate had taken steps to settle the matter and that the compromise document was also prepared by him.

9) Most of the cross-examination of Advocate Vankhede is on the aforesaid dispute which was going on between the accused and Chandrabhagabai. In the cross-examination he has tried to say that he was at a distance of 5 to 7 feet from the entrance door of his house and there the incident took place. He has given evidence that when the exchange of words started and the accused raised his voice and then his nephew and the friend of the nephew came out and then the incident took place. His attention was drawn to the contents of the F.I.R. showing that his nephew and the friend of the nephew came out only after he started shouting and this portion is denied by him. Thus, for some version there is no corroboration of the F.I.R. and to some extent PW-1 gave evidence which is not consistent with the F.I.R.

10) Dipak Gawale (PW-5) is the friend of the nephew of the first informant. His evidence shows that his residential place is situated at 6 to 7 kilometers from the spot of offence. He gave statement to police on 20-3-2001, after two days of the incident. He has given evidence that on hearing of shouts loudly outside the house he and

Sanjay came out of the house and then the quarrel started. The evidence of PW-1 shows that he shouted only when the blow hit on his left hand. Though it can be said that the evidence of Dipak (PW-5) is not that convincing and there is probability that he had no opportunity to witness the incident, there is circumstantial check to the evidence of PW-1.

11) Dr. Gopal Pasari (PW-6) is examined to prove that PW-1 had sustained injuries. In his evidence the injury certificate is proved at Exhibit 36 and the evidence of PW-6 shows that PW-1 had sustained incised wound of the size of 9 x 1/4 x 1/4 cm on left upper portion of left arm laterally and he had sustained abrasion over right little finger. It is not the case of PW-1 that injury No.2 was caused by the accused and PW-1 is not in a position to say as to how he sustained injury No.2 on that date. Both the injuries were sustained at the same time as per the medical evidence. Both the injuries are described as simple. the evidence of the doctor in the cross-examination shows that he did not find serious damage to the muscles and there was a cut to the epidermis only.

Dr. Gopal (PW-6) has admitted that such injury can be caused by sharp weapon and the age of the injury was within 8 hours.

12) Prosecution has examined Madan Gaikwad (PW-2) panch witness on the panchanama of recovery of weapon and Shivram Mali (PW-9) (PSI of Dhule City Police Station) who made the investigation of the matter. Evidence is given that on 22-3-2001 in the presence of panch witness accused gave statement that he had concealed the knife under heap of stones near Saibaba Nagar Society. Memorandum of the statement is proved at 26. Evidence is given that the accused then took the police and the panchas to the spot and he produced a knife which was found to be kept under heap of stones. panchanama of seized is proved at Exhibit 27. Nothing could be brought on the record in the cross-examination of these witness to create doubt about their evidence. It is only suggested to Madan Gaikwad (PW-2) that due to acquaintance with police he has signed on the record and no statement was given by the accused.

13) Prosecution has examined Chandrabhagabai (PW-3) the client of Advocate Vankhede and some record is produced about the dispute, but as already observed, the accused is not denying that there was such dispute and so the evidence of Chandrabhagabai need not be considered in detail. Even the evidence given by Barikrao Shriram (PW-7) Advocate from Dhule to prove that there was some dispute and the accused was asking the first informant to give him Rs.10,000/- need not be considered.

14) It is true that the F.I.R. was given immediately after the incident by PW-1 and he was medically examined on the same day. However, PW-1 produced his clothes on the next day. It is not possible to believe that when two young boys like the nephew and the friend of the nephew were in the company of the first informant, attempt was made on the life of Advocate Vankhede by the accused. In any case only one injury which can be caused by weapon like knife was found on the person of Wankhede and that too on left arm. It is already observed that there is no possibility of considering the evidence of Dipak Gawale for corroboration of the evidence of PW-1. The spot

panchanama (Exhibit 19) was admitted by the defence. No sign of the incident was found there. There is possibility that there was some dispute between the accused and the first informant, Advocate, but the dispute was not that serious and the evidence is not sufficient to draw inference that there was the intention of murder. Such finding is given by the trial Court which is a possible view in view of the evidence of the matter and so this Court holds that it is not possible to interfere in the finding given by the trial Court that this is not a case of offence punishable under section 307 IPC but the offence committed one falls under section 324 IPC.

15) The learned counsel for the appellant-accused submitted that he is Ex-serviceman aged about 62 years. Some record is produced regarding his service from Indian Army. Learned counsel for the accused submitted that the trial Court has sentenced the accused with imprisonment of one year and further sentenced for imprisonment for 3 months in default of payment of fine and this sentence is little bit harsh. In view of the nature of evidence in the matter this Court holds that the

sentence is little bit harsh. The submissions made show that the appellant has already undergone imprisonment of about one month. This Court holds that sentence of imprisonment for the period already undergone by the accused will be just and sufficient but the fine amount can be increased. The incident is of the year 2001 and we are considering the appeal in the year 2017. This Court holds that the fine amount can be increased to make it Rs.5000/- and the fine amount can be paid to the first informant.

16) In the result, Criminal Appeal No.340 of 2002 of the State is dismissed.

17) The appeal of the accused bearing Criminal Appeal No.124 of 2002 is partly allowed. The conviction given to the accused for offence under section 324 IPC is maintained but the sentence is reduced to make it imprisonment for the period undergone and the accused is to pay fine amount of Rs.5000/- (Rupees Five Thousand). In default of payment of fine, he is to undergo simple imprisonment for the period of one month. Fine amount of Rs.500/- already deposited needs to be considered and the

appellant is required to pay Rs.4500/- within 30 days from the date of this order. After depositing the amount the entire amount is to be given to the first informant, Advocate Wankhede as compensation. Considering time given for making payment of fine amount, till that time no coercive steps are to be taken like issuing conviction warrant and the bail bonds will stand cancelled after that period. Authenticated copy of operative order is to supplied to the appellant-accused.

Sd/-
(A.M. DHAWALE, J.)

Sd/-
(T.V. NALAWADE, J.)

rs1