

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 711 OF 1998

Nivrutti Genba Waghmare	)	
Age 40 years, Occ: Agri. R/at Kolvihire	)	
Tal-Purandar, Dist. Pune.	) ...	Appellant
Vs.		
The State of Maharashtra	...	Respondent

Mr.H.S.Venegavkar a/w Mr. A.L.Bhise, Advocate for the appellant
Mr.S.R.Agarkar, APP, for the State.

CORAM: SMT.SADHANA S.JADHAV, J.
DATE : 19th May, 2017.

JUDGMENT:

Heard. The appellant herein is convicted for the offence punishable under Section 326 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for two years and fine of Rs.1,000/- in default to R.I.for six months by the 2nd Addl. Sessions Judge, Baramati, in Sessions case No.32 of 1996 vide judgment and order dated 19.8.1998. Hence, this appeal.

2. Such of the facts necessary for the decision of this appeal are as follows :-

The appellant happens to be the first cousin of the complainant – Ramesh Waghmare. They were cultivating agricultural lands which are

adjacent to each other. That the complainant as well as the accused had independently dug wells in their agricultural land. It is the case of the prosecution that the source of water for cultivating agricultural land for the complainant was better than that of the accused and, therefore, there were intermittent disputes between them. However, no civil suit was filed. That the daughter of the accused was to get married. Being paternal cousin, he had requested his aunt to send the complainant along with him for purchasing clothes. The accused was intending to purchase clothes at Mumbai. They had been to Jejuri to bring money from the co-brother of the accused. They had been to village Bhandgaon, as accused was to borrow the amount of Rs.3,000/- from his co-brother. While they were on their way to the house of the relatives, the accused/appellant had offered a cigarette to the complainant and when the complainant was about to light cigarette, the accused had assaulted the complainant on his head with a hard and blunt object. The complainant had fallen dizzy for some time and thereafter it is alleged that the accused/appellant had caused a stab injury on the abdomen of the complainant. It further appears that the accused had also assaulted the complainant with fist and kick blows. The complainant had reached Yawat Police Station and lodged a report. The complainant was given treatment by Dr. Kulkarni. On the basis of his report, Crime

No.35 of 1996 was registered at Yawat Police Station against the accused for the offence punishable under Section 307 of the IPC. The investigation was completed, charge-sheet was filed and the case was committed to the Court of Sessions and registered as Sessions case No.35 of 1996. The prosecution examined nine witnesses to bring home the guilt of the accused.

3. The case rests upon the evidence of the injured/complainant i.e. PW-1 - Ramesh Waghmare and the doctor who had examined him soon after the incident i.e. PW-5 Dr. Manjusha Litake of Sassoon Hospital. The complainant PW-1 has deposed before the Court in consonance with the first information report lodged by him and the same is marked as Exhibit 11. According to him, the accused and the complainant owned agricultural lands from the same Gat number. They both had dug wells in their respective lands. There was plenty of water in the well of the complainant compared to that of the accused and, therefore, their yield was better than that of the accused. As far as the incident is concerned, the complainant has deposed that there was no prelude to the incident and when he was about to light the cigarette, the accused had assaulted him. At that relevant time, there was no cause for the accused to assault him. There are inherent omissions in the evidence of the complainant.

4. PW-5 Dr. Manjusha Litake has deposed before the Court that

she had examined the complainant. That there was right haematoma in the right flank. The complainant was treated as an indoor patient from 12.3.1996 to 22.3.1996. According to her, injury No.2 was grievous in nature. The rest of the injuries were simple in nature. She has specifically deposed that injury Nos.2 and 3 are not sufficient to cause death of the person in the ordinary course of nature.

5. It is on the basis of this evidence that the appellant who was charged for the offence punishable under section 307 of the IPC has been acquitted of the charge under Section 307 of IPC and has been convicted for the offence punishable under Section 326 of IPC.

6. Upon perusal of the substantive evidence of the complainant, it is sufficiently clear that the incident, as narrated, had occurred. It appears the complainant has suppressed some material fact which had resulted into the assault by the accused/appellant. There was no prelude to the incident and, therefore the cause of assault is not known. The motive as narrated by the prosecution does not inspire confidence. However, since the injured witness has specifically attributed the act to the present appellant, no other view is possible but to hold that the appellant is the author of the injuries sustained by the complainant. The complainant and the appellant happen to be close relatives.

7. The learned counsel for the appellant vehemently submits that after 12.3.1996 till today, there is no untoward incident between the families and they are living peacefully.

8. Taking into consideration the nature of evidence and the relation between the accused and the complainant, the appeal deserves to be partly allowed :-

ORDER

- (i) The Appeal is partly allowed.
- (ii) The conviction of the appellant for the offence punishable under Section 326 of the Indian Penal Code vide Judgment and order dated 19.8.1998 passed by the 2nd Addl. Sessions Judge, Baramati in Sessions Case No.32 of 1996 is hereby quashed and set aside.
- (iii) The appellant is convicted for the offence punishable under Section 324 of the Indian Penal Code and is sentenced to the period already undergone. The fine amount is enhanced to Rs.5,000/-.
- (iv) The appellant shall pay fine of Rs.5,000/- within eight weeks from today. Upon failure, the appellant shall undergo simple imprisonment for 15 days.
- (v) The learned Addl. Sessions Judge, Baramati shall issue

bailable warrant against the appellant and call upon him to pay fine amount of Rs.5,000/- within eight weeks.

The appeal stands disposed of.

(SMT. SADHANA S.JADHAV, J.)