

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.19 OF 2016

THE STATE OF MAHARASHTRA)...APPLICANT

V/s.

CHANDRAKANT VISHNU MOHAL & ORS.)...RESPONDENTS

Mr.P.H.Gaikwad-Patil, APP for the Applicant - State.

CORAM : A. M. BADAR, J.

DATE : 17th FEBRUARY 2017

P.C. :

1 This is an application for leave to appeal by the State, thereby seeking to challenge acquittal of respondents /original accused of offence punishable under Sections 324 read with 34 and Sections 504 read with 34 of the IPC, so also reduction of sentence imposed upon them by the learned trial court for the offence punishable under Section 324 read with 34 of the IPC, in appeal, by the learned Additional Sessions Judge, Pune, vide judgment and order dated 15th October 2015.

2 Heard the learned APP appearing for the State. He argued that accused no.1 Chandrakant Mohal had assaulted PW1 Sudhir Warghade by means of bamboo, whereas, two other accused persons assaulted him by means of kicks and fist blows. The learned APP further argued that PW3 Dr.Sandeep Bhutala, Medical Officer, has categorically denied the suggestion that injuries on the victim are possible due to his fall on rough surface.

3 I have carefully considered the submissions so advanced and also perused copies of depositions, so also, judgment of the learned trial Magistrate and the appellate judgment delivered by the learned Additional Sessions Judge, Pune. The learned trial Magistrate was pleased to convict all three accused persons of offences punishable under Sections 323, 324, 504 read with Section 34 of the IPC. For the offence punishable under Section 323 read with 34 of the IPC, respondents / accused were sentenced to suffer rigorous imprisonment for 2 months, apart from payment of fine of Rs.500/-, by each of them.

Appropriate punishment for other offences was also awarded by the learned trial Magistrate. In appeal, after acquitting respondents / accused of other offences, the learned Additional Sessions Judge was pleased to convict them for the offence punishable under Section 323 read with 34 of the IPC and sentenced them to suffer imprisonment till rising of the court apart from payment of fine of Rs.500/-, by each of them.

4 It is seen from the deposition of injured PW1 Sudhir Warghade that it was accused no.3 Rahul Mohal, who assaulted him by means of a wooden log and rest of the accused persons i.e. accused no.1 Chandrakant Mohal and accused no.2 Sandeep Mohal assaulted him by means of kicks and fist blows. The prosecution has also examined PW3 Dr.Sandeep Bhutala to prove injuries on the victim of the crime in question. To PW3 Dr.Sandeep Bhutala, history of assault by a stick was given by the injured. Upon examination of PW1 Sudhir Warghade, PW3 Dr.Buthala found him to have suffered CLW over forehead of size 3x1x1 cm, swelling on nose and abrasion on back and contusion. The doctor

has certified all injuries to be simple injuries possible by a stick. With this evidence, the appellate court held that there is no evidence to show that the victim was assaulted by a dangerous weapon causing hurt to him. It is seen that evidence of PW3 Dr.Sandeep Bathula is bereft of specific opinion about nature and age of injuries on the victim. Therefore, considering nature of injuries and weapon allegedly used, evidence of PW3 Dr.Sandeep Bathula coupled with evidence of injured does not make out a case for causing injury by a dangerous weapon. Similarly, there is no evidence to justify conviction for the offence punishable under Section 504 of the IPC.

5 In this view of the matter, no fault can be found in the impugned appellate judgment convicting the respondents / accused for the offence punishable under Section 323 read with Section 34 of the IPC and the discretion for imposing sentence cannot be faulted in the background of the circumstances in which the crime in question allegedly took place.

6 In the result, no case for grant of leave is made out.

7 The application is rejected.

(A. M. BADAR, J.)