

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.591 OF 2010

AVINASH DATTARAM GAIKWAD)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Ms.Anjali Patil, Advocate for the Appellant.

Ms.A.A.Takalkar, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 2nd FEBRUARY 2017.

JUDGMENT :

1 By this appeal, appellant / accused is challenging the judgment and order dated 21st April 2010 passed by the learned Additional Sessions Judge, Greater Bombay, Mumbai, in Sessions Case No.103 of 2010, thereby convicting the appellant / accused of the offence punishable under Section 324 of the IPC and sentencing him to suffer rigorous imprisonment for 1 year apart from directing him to pay fine of Rs.500/-, in default, to undergo simple imprisonment for 1 month.

2 Briefly stated, facts of the prosecution case are thus :

(a) Injured informant Anita Gaikwad is wife of the appellant / accused Avinash. She was serving as compounder at the clinic of Dr.Govind Jadhawani since 7 years prior to the incident. Because of quarrel between injured informant Anita and her husband / accused Avinash, Anita left her matrimonial house and started residing separately in the flat owned by her at Adarsh Building, Khardanda, Khar (West), Mumbai, along with her daughters and mother. The appellant / accused used to harass her after consuming liquor and was demanding money from her. He was threatening her that on failure to pay him, he would pour acid on her person. Ultimately, on 22nd August 2009, at about 1.00 p.m., Anita received telephone call of the appellant / accused demanding an amount of Rs.4,00,000/- from her or his share in the flat purchased by Anita. He threatened her that on failure to do so, he would pour acid on her person. After closing the clinic, Anita left for her house at about 1.15 p.m. of that day. When she just came out of the clinic, the appellant / accused

accosted her, demanded amount from her and on her refusal, poured acid on her person causing injuries to her.

(b) Injured informant Anita was then taken to Bhabha Hospital for medical treatment. PW8 Dr.Prashant Kamble examined and treated her. At the hospital itself, report of Anita was recorded by PW7 Vishwanath Phatangare, A.P.I., and accordingly, Crime No.332 of 2009 for the offence punishable under Section 307 of the IPC came to be registered against the appellant / accused.

(c) During the course of investigation, Investigator recorded statement of witnesses, drew spot panchnama and effected seizure from the spot of the incident. He seized clothes of the victim as well as of the appellant / accused. After completion of the investigation, the appellant / accused came to be charge-sheeted for the offence punishable under Section 307 of the IPC.

(d) After framing of the Charge and after conducting trial of the offence alleged against the appellant / accused, the learned trial court, by the impugned judgment and order was

pleased to convict the appellant / accused of the offence punishable under Section 324 of the IPC, by holding that the prosecution has failed to prove the Charge for the offence punishable under Section 307 of the IPC. Thus, the appellant / accused is sentenced, as indicated in the opening paragraph of the judgment.

3 I have heard learned advocate appearing for the appellant / accused. She argued that, evidence adduced by the prosecution is not sufficient to convict the appellant / accused and he is entitled for benefit of doubt. She argued that the injured is having inimical relations with the appellant / accused, and therefore, her testimony ought not to have been relied by the learned trial court. It is further argued that no independent witnesses are examined by the prosecution and no offence is proved against the appellant / accused.

4 As against this, the learned APP argued that there is no reason to disbelieve version of the injured witness which is also

supported by other witnesses apart from the forensic evidence adduced by the prosecution.

5 I have carefully considered the rival submissions and also perused the record and proceedings including deposition of witnesses.

6 Injured Anita is undisputedly wife of the appellant / accused. She was residing separately from the appellant / accused because of harassment by the appellant / accused. Her evidence shows that on 22nd August 2009, at about 10.00 a.m., she had been to her work at the clinic of Dr.Govind Jadhvani. She deposed that at about 1.00 p.m., the appellant / accused called her on her cell phone and threatened her that he would pour acid on her person and would kill her, if his amount is not refunded by her. As per version of Anita, at about 1.15 p.m., after the clinic was closed, she started returning to her house and when she travelled a distance of about 5 to 6 feet from the clinic, the appellant / accused came from the front direction, threatened her

and poured acid on her person. PW1 Anita deposed that the acid fell on her eyes, head and her back causing burning sensation to her, and thereafter, she was admitted to Bhabha Hospital. Nothing came in cross-examination of injured Anita to disbelieve her version about pouring of acid by the appellant / accused. As such, it is hard to disbelieve her evidence, as she herself is an injured victim in the case involving only one accused. It does not stand to reason that she would spare the real culprit and rope in an innocent. Promptly lodged FIR of injured PW1 Anita corroborates her version recording the incident.

7 PW6 Shubhangi Pawar is an eye witness to the incident in question. PW6 Shubhangi deposed that at the time of incident, she was returning from her workplace and saw the appellant / accused pouring acid on person of PW1 Anita. As per version of PW6 Shubhangi, PW1 Anita demanded water and she gave water to her. Evidence of PW6 Shubhangi shows that, thereafter, she gave bath to PW1 Anita. PW6 Shubhangi has duly identified clothes of PW1 Anita. There is nothing in cross-examination of PW6 Shubhangi, who is a disinterested witness.

8 PW3 Chetan Bhojani is shopkeeper. His evidence shows that on the day of incident, the appellant / accused purchased a bottle of acid from his shop. This witness has identified the appellant / accused as a person who had purchased bottle containing acid from his shop. Evidence of PW3 Chetan, as such, duly corroborates version of injured PW1 Anita.

9 PW8 Dr.Prashant Kamble is a Medical Officer from Bhabha Hospital. It is in his evidence that at about 1.47 p.m. of 22nd August 2009, he examined Anita and found that there were burn marks on lateral aspect of her back. PW8 Dr.Prashant Kamble further deposed that PW1 Anita was complaining of burning sensation and pain in her eyes. This witness referred PW1 Anita to Opthal and Medicine department and issued medical certificate at Exhibit 25. Evidence of PW8 Dr.Prashant Kamble shows that PW1 Anita was discharged from the hospital on the very same day after medical treatment.

10 During course of investigation, PW7 API Vishwanath Phatangare had seized clothes of victim – PW1 Anita, clothes of the appellant / accused, so also, the tar from the road where the incident had happened. Chemical Analysis Report at Exhibit 23 shows that all these articles were found to be having chloride from the hydrochloric acid.

11 It is, thus, seen from this evidence that the prosecution has proved the incident of pouring of acid by the appellant / accused on person of injured PW1 Anita, thereby causing injuries to her. The question which falls for consideration is whether the offence punishable under Section 324 of the IPC is proved against the appellant / accused, as State has not challenged acquittal of the appellant / accused from the offence punishable under Section 307 of the IPC. Evidence of injured Anita shows that she had suffered injuries on her back because of acid. Evidence of PW8 Dr.Prashant Kamble also corroborates this version of PW1 Anita. Injuries were caused by acid. It is, thus, clear that, injured Anita had suffered bodily pain because of act of the appellant / accused.

The hurt was caused by pouring acid on person of PW1 Anita. As such, the offence squarely falls under Section 324 of the IPC, and therefore, it cannot be said that the learned trial court erred in convicting the appellant / accused for the offence punishable under Section 324 of the IPC. Similarly, adequate sentence is imposed on him by the learned trial court, which also does not warrant any interference at the hands of this court.

12 The appeal fails, and therefore, the order :

ORDER

Appeal is dismissed.

(A. M. BADAR, J.)