

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

910 CRIMINAL APPEAL NO. 104 OF 2018

Pundlik s/o Digambar Pawar,
Age : 47 years, Occu. Driver,
R/o. Shaikh Rajur, Tq. Gangakhed,
District Parbhani.
(At present Yerwada Jail)

..Appellant
(Orig. Accused)

Versus

The State of Maharashtra

..Respondent
(Orig. Complainant)

...
Shri. M. P. Kale, Advocate for the appellant
Shri. A. A. Jagatkar, APP for Respondent-State

...

**CORAM : P. R. BORA, J.
Dated: 16th MARCH, 2018**

ORAL JUDGMENT :

1. Heard finally.
2. When the present Criminal Appeal is taken up for hearing, learned Counsel appearing for the appellant submits that, the appellant is restricting his objection only to the quantum of punishment.
3. Learned Counsel submitted that, though the

appellant was prosecuted for an offence under Section 307 of I.P.C., after having considered the entire evidence on record, the learned 2nd Additional Sessions Judge, Kopergaon has held the appellant guilty for an offence under Section 324 of I.P.C. and has sentenced him to suffer 3 years rigorous imprisonment. Learned Counsel further submitted that, in the aforesaid offence the appellant was arrested on 04.08.2015 and was not released on bail. Learned Counsel submitted that, as such the appellant has already undergone the punishment of around 2½ years i.e. 30 months.

4. Learned Counsel further submitted that, while imposing the maximum punishment provided for an offence under Section 324 of I.P.C., the learned Sessions Judge has not assigned sufficient reasons therefor. Learned Counsel further submitted that, so far as the nature of dispute between victim and the appellant is concerned, the dispute had arisen on trifle issue about sleeping space. Learned Counsel further submitted that, the appellant and the victim Somnath both are labourers and used to sleep in the temple at Shirdi. Learned Counsel

further submitted that, there are no criminal antecedents to the present appellant and from the evidence on record, it cannot be said that, the acts allegedly committed by the appellant were so grave so as to invite maximum punishment for the said offence. Learned Counsel further submitted that, the entire family depends upon the income of the present appellant and as such, he prayed for modifying the sentence awarded by the Sessions Court and to release the appellant on the sentence already undergone.

5. Learned APP has opposed the submissions so made on behalf of the appellant. Learned APP taking me though the observations made by the learned Additional Sessions Judge submitted that the attempt was made by the present appellant to cause grievous injury to victim Somnath, however the evidence could not be brought on record so as to prove the said charge and as such, the learned Additional Sessions Judge has held the appellant guilty for an offence under Section 324 of I.P.C. Learned APP submitted that, considering the evidence on record, the maximum punishment was warranted in the present matter

and the same has been accordingly awarded by the Court below and as such, no interference is required in the order so passed.

6. I have carefully considered the submissions made by the learned Counsel appearing for the appellant and the learned APP. I have also carefully perused the impugned Judgment. Perusal of the impugned Judgment reveals that, though the appellant was prosecuted for an offence under Section 307 of I.P.C., the Court has in clear terms observed that, the prosecution has failed in proving the said charge and from the evidence on record, the only charge, which could be proved against the appellant was for an offence under Section 324 of I.P.C. For the offence under Section 324 of I.P.C. the maximum punishment provided is of three years. Learned Additional Sessions Judge in the impugned Judgment has not discussed as to what made him to award the maximum punishment to the appellant. In para 15 of the impugned judgment the Court has observed thus :

Para No.15 :

"Heard accused on the point of sentence. He is praying for leniency. The offence p.u.s. 324 of IPC, is punishable with 3 years imprisonment or with fine. Accused is not in financial condition to pay the fine

amount. Therefore, the rigorous imprisonment for three years sentence is sufficient to be awarded in this matter and hence, pass following order."

7. Except observing that the accused has prayed for leniency, no more discussion is made by the learned trial Judge. After considering overall facts in the matter, it appears to me that, no such case was in fact made out so as to award maximum punishment to the appellant. In view of the fact that, there are no criminal antecedents and that the quarrel had arisen on a trifle issue, I am inclined to accept the request made on behalf of the appellant to reduce the sentence as awarded by the learned trial Judge to the sentence already undergone. Hence the following order.

ORDER

1. The conviction of the appellant for the offence under Section 324 of I.P.C. though is maintained, the sentence is modified as under :

(i) The appellant is sentenced to suffer the imprisonment already undergone.

(ii) The appellant-accused be released forthwith, if not required in any case or crime.

. The appeal thus stands partly allowed.

(P R. BORA, J.)