

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

CRIMINAL APPEAL NO.166 OF 2014

1. Shama Bhagwan Waghode
Age:30 years, Occu.:Labour
2. Vinod Ashok Bhil
Age:26 years, Occu.:Labour,

Both R/o. Piloda, Tq. Yawal,
Dist. Jalgaon

**...APPELLANTS
(Ori. Accused)**

VERSUS

The State of Maharashtra
through Police Station officer,
Police Station Faizpur, Tq. Yawal
Dist. Jalgaon

...RESPONDENT

...
Shri. Govind Kulkarni, Advocate for Appellants;
Shri. R.B. Bagul and Ms. S.S. Raut, A.P.Ps. for State.
...

CORAM: P.R. BORA, J.

Date of reserving the Judgment : 22/12/2017
Date of pronouncing the Judgment :30/01/2018

JUDGMENT:

1. The appellants have filed the present appeal against the judgment and order passed on 4th of February, 2014, by the Additional Sessions Judge at Jalgaon in Sessions Case No.165/2010. Vide the impugned judgment and order, the

learned Additional Sessions Judge has convicted the appellants for the offenses punishable under Sections 325 and 451 of Indian Penal Code. Appellant No.1 Shama has been sentenced to undergo rigorous imprisonment for two years and to pay fine of Rs.4,000/-; in default, to suffer simple imprisonment for two months for the offense punishable under Section 325 of IPC whereas, for the offense punishable under Section 451 of the IPC, he has been punished to undergo rigorous imprisonment for six months and to pay fine of Rs.1,000/-; in default, to suffer simple imprisonment for one month. Appellant no.2 Vinod has been sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs.4,000/-; in default, to suffer simple imprisonment for two months for the offense punishable under Section 325 of IPC whereas, for the offense punishable under Section 451 of IPC, he has also been sentenced to suffer rigorous imprisonment for six months and to pay fine of Rs.1,000/-; in default, to undergo simple imprisonment for one month. The appellants are, hereinafter, referred to as 'accused no.1' and 'accused no.2'.

2. Both the accused were prosecuted by Police Station, Faizpur, district Jalgaon, for the offenses punishable under Sections 307, 451 and 452 read with Section 34 of IPC. It

was alleged that on 30th of May, 2010, both the accused, in furtherance of their common intention, entered into the house of informant Sakhubai under the influence of liquor at about 8 p.m. and made assaults on informant Sakhubai as well as Sukhdeo Waghode. It was further the case of the prosecution that accused no.2 Vinod gave an axe blow on both the hands and head of Sukhdeo Waghode and also made an assault on the head of Sakhubai with the same axe and caused severe bodily injuries to both of them. According to the case of the prosecution, accused no.1 Shama had made an assault on the head of informant Sakhubai with the same axe by snatching the same from the hands of accused no.2 Vinod.

3. Sakhubai Sukhdeo Waghode (PW 3) lodged report of the alleged incident to Police Station, Faizpur. A report was taken by the Police persons in the hospital at Bhusawal on 30th of May, 2010, and the investigation was set in motion. According to the case of the prosecution, after Sakhubai Waghode and Sukhdeo Waghode were assaulted by the accused, they were taken to the Government Hospital at Bhusawal and after some primary treatment was given to Sakhubai, her statement was recorded by the Police which was treated as FIR in the matter and the investigation was set in

motion. During the course of investigation, usual formalities like visiting the spot of occurrence, preparing spot panchnama, seizure the incriminating articles from the spot, seizure of clothes on the person of the victims, making arrests of the accused, seizure of clothes on their person, obtaining injury certificates pertaining to the victim, etc. were performed and the statements of necessary witnesses were also recorded. After completing the investigation, chargesheet was filed against both the accused for the offenses punishable under Sections 307, 451, 452 read with Section 34 of IPC in the Court of Judicial Magistrate, First Class, at Yawal.

4. Since the offense under Section 307 of the IPC was exclusively triable by the Court of Sessions, the learned Judicial Magistrate, First Class at Yawal, vide order passed on 9.11.2010, committed the case to the Sessions Court at Jalgaon whereupon present sessions case was registered. On 4th of June, 2011, the learned Additional Sessions Judge framed the charge against the accused and recorded their plea. The accused did not plead guilty and claimed to be tried.

5. In order to prove the charges levelled against the accused, the prosecution examined as many as eight witnesses.

The prosecution evidence commenced with the testimony of Jagdish Rupchand Jaware in whose presence panchnama of the spot was prepared and after the testimony of Goraksh Baban Palve, the investigating officer, was recorded, the prosecution evidence was closed. The other witnesses examined by the prosecution were the victims of the alleged incident, namely, Sakhubai (PW 3), Sukhdeo (PW 6), the alleged eye witnesses, namely, Kamal Waghode (PW 4), Kedar More (PW 5). The Medical Officer, namely, Rameshchandra Sawkare (PW 7) in whose evidence the injury certificates pertaining to Sakhubai (P:W 3) and Sukhdeo (PW 6) were proved. The accused have denied the case of the prosecution in toto and it was their defense that they were falsely implicated because of one past event creating enmity between them and informant Sakhubai and her husband Sukhdeo.

6. Learned Additional Sessions Judge, after having assessed the oral and documentary evidence brought on record by the prosecution, held both the accused guilty for the offense punishable under Sections 325 and 451 read with Section 34 of IPC and sentenced them to suffer punishment as noted hereinabove. Aggrieved thereby, the accused have preferred the present appeal.

7. Shri Govind Kulkarni, learned Counsel for the appellants - accused, assailed the impugned judgment and order on various grounds. Learned Counsel submitted that the learned Additional Sessions Judge has failed in not considering that the witnesses examined by the prosecution were the close relatives of PW 3 Sakhubai and PW 6 Sukhdeo and, as such, their evidence could not have been implicitly relied upon without being corroborated by any independent witnesses. Learned Counsel further submitted that the learned Sessions Judge has also failed in taking into account the inconsistencies in the version of the prosecution witnesses. Learned Counsel further submitted that the learned Additional Sessions Judge has utterly failed in relying upon the evidence of so called recovery which was admittedly made after the period of more than three weeks of filing of the First Information Report. Learned Counsel further submitted that the learned Additional Sessions Judge has failed in appreciating that the statement of PW 6 Sukhdeo was not recorded by the investigating officer till filing of the chargesheet and his statement came to be recorded after commencement of the trial in the matter. According to the learned Counsel, on this count alone, the evidence of PW 6 Sukhdeo was liable to be

discarded. Learned Counsel submitted that once the learned Additional Sessions Judge has reached to the conclusion that the evidence brought by the prosecution in respect of the weapon of offenses was not free from doubt, and during whole of the trial, no such dependable evidence could come on record to prove the fact that the alleged assaults were made by the accused with the weapons like axe and stone, the entire prosecution evidence was liable to be rejected and no conviction could have been based on such unbelievable evidence. Learned Counsel submitted that the trial Court also did not consider the circumstance which has been brought on record by the accused that prior to few months of the alleged occurrence, accused no.2 Vinod had filed a complaint against PW 6 Sukhdeo and that was the reason that a totally false case was filed implicating accused therein. Learned Counsel, therefore, prayed for setting aside the impugned judgment and order and, consequently, to acquit both the accused from the charges levelled against them. In the alternative, it was submitted that if this Court reaches to the conclusion that the conviction of the accused by the trial Court for the offenses under Sections 325 and 451 of IPC does not call for any interference, considering the other circumstances brought on record by the accused, the sentence imposed upon the accused

by the trial Court be modified and the accused be released on the sentence of imprisonment already undergone by them.

8. Learned A.P.P. opposed the submissions so made on behalf of the appellants accused. He supported the impugned judgment and order. Learned A.P.P. submitted that the learned Additional Sessions Judge has passed a well reasoned order and while imposing the punishment has also taken into consideration all relevant aspects and as such, no interference is warranted in the impugned judgment and order. Learned A.P.P., therefore, prayed for dismissal of the appeal.

9. After having considered the submissions made by the learned Counsel appearing for the parties, and on perusal of the impugned judgment and the evidence on record, apparently it does not appear that the learned Additional Sessions Judge has committed any error in holding the accused guilty for the offenses punishable under Sections 325 and 451 of IPC.

10. I have carefully perused the evidence of PW 3 Sakhubai and PW 6 Sukhdeo who are the victims of the alleged incident. I do not find any inconsistency in the material facts stated by both these witnesses in their respective testimonies.

Though an attempt was made by the learned Counsel for the accused to show some inconsistencies in the evidence of these witnesses, the inconsistencies attempted to be shown are immaterial and insignificant. In so far as core incident of making assaults by the accused on Sakhubai and Sukhdeo is concerned, PW 3 and PW 6 have duly corroborated the facts pertaining to the said incident. Learned additional Sessions Judge has, therefore, rightly relied upon the oral evidence of both these witnesses. Learned Additional Sessions Judge has discussed the oral evidence of PW 3 Sakhubai in paragraph no.11 of the impugned judgment. Reproducing the facts as were deposed by PW 3 in her testimony before the Court and comparing the said facts with the facts as were stated by said Sakhubai in her report at Exh.34, the learned Additional Sessions Judge has recorded a clear finding that the entire testimony of PW 3 Sakhubai is corroborated by her report at Exh.34.

11. The learned Additional Sessions Judge has then observed that PW 3 Sakhubai is an illiterate and rustic lady who was admitted in injured condition in the hospital whereas her husband had sustained severe head injury and was admitted in the hospital in unconscious condition. Learned Additional

Sessions Judge has further observed that in the aforesaid circumstance, there was least possibility of said Sakhubai lodging any false or manipulated complaint. Nothing has been brought to my notice by the learned Counsel appearing for the appellant accused so as to record any contrary finding than the one recorded by the learned trial Court in so far as reliability of the evidence of PW 3 is concerned.

12. Learned Additional Sessions Judge in paragraph nos. 12, 13 and 14 of the impugned Judgment has dealt with the evidence of PW 4 Kamal, who happens to be the daughter in law of PW 3 Sakhubai and PW 5 Kedar, who is the grand son of PW 3 Sakhubai and PW 6 Sukhdeo. It was vehemently argued by the learned Counsel appearing for the accused that no reliance was liable to be placed on the evidence of PW 4 Kamal and PW 5 Kedar since they happened to be the close relatives of PW 3 and PW 6 and further that their evidence was not consistent with the other prosecution material. In the light of the submissions so made, when I perused the evidence of both these witnesses and the discussion made by the learned Additional Sessions Judge in regard to the said evidence, it is noticed that the learned Additional Sessions Judge has not relied upon the evidence of PW 4 Kamal. The evidence on

record, however, shows that PW 5 Kedar, at the relevant time, was taking meal along with his grand father and has eye witnessed the accused making assaults on his grand father Sukhdeo as well as on his grand mother Sakhubai. Though there are certain omissions in the evidence of PW 5 Kedar also, I do agree with the observation made by the learned Additional Sessions Judge that the omissions so brought on record were insignificant and immaterial. After having carefully perused the evidence of PW 5, it does not appear to me that the learned Additional Sessions Judge has committed any error in recording a finding that the evidence of PW 5 Kedar as an eye witness was consistent and corroborated the testimony of PW 3 Sakhubai in regard to criminal trespass and the assaults made by the accused.

13. More thrust of the learned Counsel for the accused was on the point that the learned Additional Sessions Judge could not have relied upon the evidence of PW 6 Sukhdeo. It was contended by the learned Counsel that the statement of said Sukhdeo was admittedly not recorded till filing of the chargesheet and the same came to be recorded only after commencement of the trial. It was submitted by the learned Counsel that the statement of PW 6 Sukhdeo was recorded by

the Police in a manner to suit the prosecution case already submitted. It was also contended by the learned Counsel that the learned Additional Sessions Judge has also failed in appreciating the ratio laid down in the case of Sheo Shankar Singh Vs. State of Jharkhand and Another ((2011) 3 SCC 654). After having gone through the entire material on record, I do not find any substance in the argument so made. The learned Additional Sessions Judge has perfectly appreciated the law laid down in the case of Sheo Shankar Singh Vs. State of Jharkhand and Another (cited supra). There was ample evidence on record and more particularly, the medical evidence to show that PW 6 Sukhdeo was injured in the alleged assault. PW 6 Sukhdeo was immediately removed to the hospital and as has been proved from the material on record, he was in unconscious state at the relevant time. The medical evidence has fully established that Sukhdeo was an indoor patient for long time. There is further ample evidence on record to show that Sukhdeo had suffered grave injuries. Moreover, from the testimony of PW 3 and PW 5 Kedar, who had eye witnessed the said incident, it was fully established that PW 6 Sukhdeo was assaulted by accused no.1 Vinod with an axe. Having regard to the evidence as aforesaid, as has been observed by the learned Additional Sessions Judge, no much weightage was

liable to be attached to the lapses on the part of the investigation officer in committing delay in recording the statement of PW 6.

14. Further, as has been observed by the learned Additional Sessions Judge, PW 6 Sukhdeo did not depose anything about the assault made on his wife Sakhubai which indicates that after he became unconscious, he could not see further events. As has been observed by the learned Additional Sessions Judge, the conduct of PW 6 in stating the facts in regard to the assault suffered by him but not stating anything as about the assault on PW 3 Sakhubai, which he had not seen, indicates that he did not improve his version or did not attempt to tell the facts which were not within his knowledge, meaning thereby that he was a fully believable witness.

15. It has to be further stated that the learned Additional Sessions Judge has preferred not to rely upon the evidence as about the recovery of the weapon allegedly used in commission of the crime. It is further noticed that in absence of any unimpeachable evidence, proving the fact that the alleged assaults on PW 3 and PW 6 were made by the accused

with the aid of an axe, though there was medical evidence on record suggesting of the use of weapon like axe in making assaults on the victims, the learned Additional Sessions Judge has not held the accused guilty for causing grievous hurt to the accused with the aid of dangerous weapons and instead has held them guilty for the offense under Section 325 of IPC. It has to be further taken note of that though according to the prosecution the assaults made by the accused persons on PW 3 Sakhubai and specially on PW 6 Sukhdeo was an attempt to cause his murder, in absence of any cogent or sufficient evidence in that regard, the learned Additional Sessions Judge has declined to hold the accused guilty for the offense punishable under Section 307 of IPC and as stated hereinabove, in absence of any cogent and sufficient evidence as about the weapon used in the offense by the accused, has ultimately held them guilty for the offense punishable under Section 325 and 451 of IPC.

16. After having considered the entire evidence on record, it does not appear to me that any error has been committed by the learned Additional Sessions Judge in holding the appellants guilty for the offenses punishable under Sections 325 and 451 of the IPC. I do not find substance in the

objections raised on behalf of the appellants accused in so far as the finding as aforesaid is concerned. Thus, no case is made out by the appellants accused for causing interference in the finding so recorded by the learned Additional Sessions Judge holding the appellants accused guilty for the offense punishable under Section 325 and 451 of the IPC.

17. The next question which falls for my consideration is whether the alternative prayer made on behalf of the accused to reduce the punishment and release the appellants accused on the sentence of imprisonment already undergone, deserves any consideration. Learned Counsel for the appellants / accused brought to my notice that both the accused were arrested on 30th of May, 2010. Accused no.1 Shama was released by the Sessions Court vide order passed on 3rd of July, 2010 whereas accused no.2 Vinod was released on bail vide order passed by the Sessions Court on 25th of June, 2010. Learned Counsel further submitted that during the course of the trial, accused no.1 was taken in custody on 31.10.2013 and remained in custody till 4th of February, 2014, i.e. till the date of pronouncement of the judgment and order in the Sessions case. Learned Counsel further submitted that after conclusion of trial and pronouncement of the judgment,

the learned Additional Sessions Judge released both the applicants on bail and suspended the execution of the sentence imposed upon them for a period of 30 days so as to enable them to prefer appeal before this Court. Learned Counsel submitted that both the appellants were released on bail by this Court vide order passed on 25th of March, 2014. Learned Counsel further submitted that as accused appellants did not remain present on the date of hearing, this Court had issued non bailable warrant against them and both the accused were taken in custody in execution of the said warrants on 24th of March, 2017. Learned Counsel submitted that since then the appellants accused are in jail. Learned Counsel submitted that accused no.1 has thus undergone the imprisonment for a period of about 15 months whereas accused no.2 has undergone the imprisonment for a period of about 12 months. Learned Counsel further submitted that both the accused are of young age and both of them have family responsibilities upon them. Learned Counsel prayed that considering the circumstance both the accused be released on the sentence of imprisonment already undergone.

18. Learned A.P.P. opposed for showing any leniency to the accused stating that the learned Additional

Sessions Judge has already considered the contentions raised by the accused before awarding them the punishment and has already shown leniency by awarding two years' rigorous imprisonment for accused no.1 and three years' rigorous imprisonment for accused no.2; whereas, the maximum sentence provided for the offense punishable under Section 325 of IPC is seven years.

19. There is no straight jacket formula for sentencing an accused on proof of crime. The Courts have, however, evolved certain principles: twin objectives of the sentencing policy are deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstances of each case and the Court must keep in mind the gravity of the crime, motive for the crime, nature of the offense and all other attendant circumstances.

20. In the instant matter, both the accused are closely related to the victims, namely, Sakhubai and Sukhdeo. Accused No.1 Shama is the son of real brother of Sukhdeo, namely, Bhagwan whereas accused no.2 Vinod is the nephew of Bhagwan. It is not in dispute that at the time of alleged occurrence, the age of accused no.1 Shama was 30 years and

the age of Vinod was 26 years. As has been noted by the learned Additional Sessions Judge, both the accused are married and are having children in the age group of 8 to 10 as well as the old parents. Learned Additional Sessions Judge has also observed that the prosecution has not brought on record any criminal antecedents of the accused. As has come on record, few days prior to the alleged occurrence, there was a quarrel between accused no.1 Shama and his father Bhagwan. Sukhdeo i.e. the victim in the present case had intervened in the said quarrel. Accused no.1 Shama was annoyed with the intervention so made by Sukhdeo and, according to the case of the prosecution, that was the only reason that on the date of occurrence accused no.1 Shama, accompanied by accused No.2 Vinod, had been to the hut of Sukhdeo. It has also come on record that accused no.1 Shama at the relevant time was under influence of liquor. Though it was the case of the prosecution that accused no.2 Vinod made an assault on Sukhdeo, PW 6, with an axe and accused no.1 Shama did also assault on Sakhubai, it has failed in bringing on record any unimpeachable evidence to prove the weapon of assault. In the circumstances, the learned Additional Sessions Judge has held both the accused guilty for the offense punishable under Section 325 of IPC though they were charged for the offense

punishable under Section 307 of IPC. It is further revealed that considering the role played by accused no.1 Shama and accused no.2 Vinod in occurrence of the alleged crime, the learned Additional Sessions Judge has imposed punishment of two years rigorous imprisonment upon accused no.1 Shama whereas some higher punishment to accused no.2 Vinod i.e. of three years rigorous imprisonment. As has been submitted by learned Counsel for the accused, accused no.1 Shama has already undergone punishment of around fifteen months whereas accused no.2 has undergone the imprisonment for a period of about one year. As noted earlier, there are no criminal antecedents to the accused. Admittedly, both the accused are of young age. Both have the responsibilities of their families. Both have children. Accused no.2 Vinod is having an old mother. Both the accused have already suffered the trial for a period of four years and, thereafter, the proceedings before this Court for a period of more than three years. Admittedly, the quarrel which had occurred between the accused and the victims was for some trifle reason. The crime which had occurred at the hands of the accused cannot be termed as heinous. From the evidence on record no such inference can also be drawn that it was a pre-arranged, pre-meditated and determined assault on the victims with an

intention to finish them. Although victim Sukhdeo had received certain injuries, only one injury has attracted Section 325 of IPC. The injury which was received to PW 3 Sakhubai was admittedly simple. As has been argued by the learned Counsel for the accused, after the alleged occurrence, no untoward incident had ever occurred between the parties during the interregnum though both the accused were on bail. Both the accused have already suffered rigour of imprisonment for a period of more than one year.

21. Considering the nature and manner of the offense allegedly committed by the accused, considering the age of the accused and the family responsibilities upon them and having regard to the strata of the society to which they belong, it appears to me that the prayer made by the learned Counsel appearing for the accused to reduce the period of sentence imposed upon the accused deserves to be positively considered. The maximum sentence imposed upon accused no.1 Shama is of the period of two years of which he has already undergone imprisonment of fifteen months. I, therefore, do not see any difficulty in releasing accused no.1 on the sentence of imprisonment already undergone. However, having regard to the sentence of three years imprisonment awarded to accused

no.2 Vinod as against which he has undergone the imprisonment of twelve months, it appears to me that if accused no.2 is sentenced to suffer rigorous imprisonment for eighteen months that will be an adequate punishment for him. While reducing the period of sentence awarded to the accused persons, I find it appropriate to strike balance by increasing the amount of fine. I reiterate that the accused are not the habitual offenders. Since the crime committed by the accused cannot be termed as a heinous crime and they are not involved in any anti social activity, prolonged confinement may not be required in the instant case. In the foregoing circumstances and for the reasons stated above, following order is passed:

ORDER

1. Conviction of accused no.1 Shama Bhagwan Waghode and accused No.2 Vinod Ashok Bhil for the offenses punishable under Sections 325 and 451 of the IPC and the sentence awarded to them for the offense punishable under Section 451 of IPC is maintained.
2. The sentence awarded to accused no.1 Shama for the offense punishable under Section 325 of IPC to suffer

rigorous imprisonment for two years and to pay fine of Rs.4,000/- is modified as under:

Accused no.1 Shama Bhagwan Waghode is sentenced for the offense punishable under Section 325 of IPC to the period of imprisonment already undergone by him and to pay fine of Rs.10,000/- (Rs. ten thousand); in default, to suffer simple imprisonment for two months.

3. Sentence imposed upon accused no.2 Vinod Ashok Bhil for the offense punishable under Section 325 of IPC is modified as under:

Accused No.2 Vinod Ashok Bhil is sentenced to suffer rigorous imprisonment for eighteen months and to pay fine of Rs.10,000/- (Rs. ten thousand); in default, to undergo simple imprisonment for two months.

4. The sentences imposed upon the accused for the offenses punishable under Section 451 of IPC and under Section 325 of IPC shall run concurrently.

5. The period of imprisonment undergone by the accused shall be set off against the terms of imprisonment imposed upon them.

6. Accused No.1 Shama Bhagwan Waghode shall be released forthwith, if not required in any other crime.

7. Both the accused have already deposited the fine amount of Rs.5,000/- (Rs. five thousand), each. If the accused deposits the remaining amount of fine, Rs.20,000/-(Rs. twenty thousand) out of the same be jointly paid to Sukhdeo Mohan Waghode and Sakhubai Sukhdeo Waghode.

Criminal Appeal (No.166 of 2014) thus stands partly allowed.

(P.R.BORA)
JUDGE

AGP/166-14cr.appeal

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