

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPEAL NO.599 OF 2015
WITH
CRIMINAL APPLICATION NO.1449 OF 2017
IN
CRIMINAL APPEAL NO.599 OF 2015**

SHIVAJI RAJENDRA JADHAV)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Ms.Ameeta Kuttikrishnan, Appointed Advocate for the Appellant.'

Mr.Pravin Dabade i/b. Mr.Vikas B. Shivarkar, Advocate for the Applicant.

Mr.S.V.Gavand, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 13th MARCH 2018

JUDGMENT :

1 The appellant/accused addressed a letter to this court which is registered as Criminal Application No.1449 of 2017. Vide this communication, the frustrated appellant has communicated to this court that he is arrested by Sangavi Police Station on 8th

March 2012 in the subject crime and is languishing in the jail since then and his appeal is not taken up for final hearing. He has served major part of the sentence imposed upon him. Considering these recitals in the communication of the appellant/accused, it is seen that he has undergone sentence of imprisonment for more than 6 years. That is how, the appeal itself is taken up for final hearing.

2 The appellant/accused came to be convicted by the learned Additional Sessions Judge, Pune, vide judgment and order dated 16th March 2015 in Sessions Case No.446 of 2012 for offences punishable under Sections 307, 326, 452, 506(ii) of the Indian Penal Code and under Sections 37(1) read with 135 of the then Bombay Police Act. For offences punishable under Sections 307, 326, 452 and 506(ii) of the Indian Penal Code, the appellant/accused is sentenced to suffer imprisonment for 7 years apart from payment of fine of Rs.5,000/-, and in default, to undergo further imprisonment for 1 year, on each count. For the offence punishable under Section 37(1) read with 135 of the then

Bombay Police Act , he is directed to suffer imprisonment for 1 year apart from payment of fine of Rs.5,000/-, and in default, he is sentenced to suffer imprisonment for 1 month. Feeling aggrieved by this judgment and order dated 16th March 2015, this appeal by the convict.

3 Facts leading to the prosecution of the appellant/accused can be summarized thus :

- (a) Appellant/accused Shivaji Rajendra Jadhav was friend of brother of injured PW2 Deepali. He used to visit her house even in absence of her mother PW1 Mangala, her brother Bhushan and other family members. This acquaintance developed love relations between the appellant/accused and PW2 Deepali. Subsequently, there was quarrel between the appellant/accused and brother of injured PW2 Deepali.
- (b) According to the prosecution case, the appellant/accused started suspecting behaviour of injured PW2 Deepali. On 8th March 2012, at about 9.00 p.m., when injured informant

PW1 Mangala was cooking food and when her daughter injured PW2 Deepali was helping her in cooking food, the appellant/accused entered in their house armed with a sickle. He questioned PW2 Deepali as to why she wanders along with other boys. Then, he gave blows of sickle on head and hand of PW2 Deepali. When her mother PW1 Mangala attempted to save PW2 Deepali, the appellant/accused assaulted PW1 Mangala by the same sickle. He had threatened that he will kill PW2 Deepali and PW1 Mangala. Upon hearing their shouts, neighbours rushed towards the spot and therefore, the appellant/accused ran away.

- (c) Injured PW1 Mangala and her daughter PW2 Deepali were then admitted to Makhan Hospital where statement of injured PW1 Mangala came to be recorded by PW6 Anil Londhe, Assistant Police Inspector, and accordingly, Crime No.80 of 2012 for offence punishable under Sections 307 and 326 of the Indian Penal Code came to be registered with

Sangavi Police Station against the appellant/accused.

- (d) During the course of investigation, PW6 Anil Londhe, Assistant Police Inspector, conducted panchnama of the spot of the incident (Exhibit 33) in presence of panch witness PW5 Kshitij Kondhare. Clothes of the injured victims came to be seized vide Seizure Panchnama Exhibit 38. The appellant/accused came to be arrested and his blood stained clothes were seized by PW6 Anil Londhe, Assistant Police Inspector, in presence of panch witness PW7 Ganesh More vide Seizure Panchnama Exhibit 37. On the basis of voluntary disclosure statement (Exhibit 23) made by the appellant/accused in presence of PW3 Satyanarayan Bangad, the Investigating Officer seized blood stained sickle under panchnama Exhibit 24. On completion of routine investigation, the appellant/accused came to be charge-sheeted. The learned trial court framed and explained the Charge to the appellant/accused. He was charged for commission of an attempt to commit murder of PW2

Deepali, causing grievous hurt by means of sickle to PW1 Mangala, committing house trespass, having made preparations to cause hurt to PW1 Mangala and PW2 Deepali, causing their criminal intimidation and for breaching the order passed by the Commissioner of Police, Pune, prohibiting possession of deadly weapon. It needs to be mentioned here that the appellant/accused was not charged for causing grievous hurt by a dangerous weapon to PW2 Deepali vide Charge Exhibit 4.

- (e) As the appellant/accused pleaded not guilty, the prosecution has examined in all seven witnesses in order to establish guilt of the appellant/accused for the offences alleged against him. As stated, injured informant Mangala is examined as PW1. Her daughter – injured Deepali is examined as PW2. Panch witness Satyanarayan Bangad is examined as PW3. Medical Officer Dr.Kiran Makan, who had treated the injured, is examined as PW4. Panch witness Kshitij Kondhare is examined as PW5. Investigating Officer

Anil Londhe, Assistant Police Inspector, is examined as PW6.

Panch witness Ganesh More is examined as PW7.

- (f) Defence of the appellant/accused was to the effect that injured PW2 Deepali, in past, had eloped with a person named Sanket Bhise. She was brought back to her paternal house by the appellant/accused. Thereafter, injured PW2 Deepali insisted the appellant/accused to marry her. He refused. Therefore, PW2 Deepali had caused injuries to her and while restraining her from committing self inflicting injuries, PW1 Mangala also suffered injuries. The appellant/accused examined Dr.Anil Patil as DW1.
- (g) After hearing the parties, by the impugned judgment and order, the learned trial court concluded that the appellant/accused attempted to commit murder of PW2 Deepali, he caused grievous hurt to PW1 Mangala and PW2 Deepali by means of a sickle i.e. an instrument which can be used as a weapon, he had committed house trespass with

preparation to cause hurt to injured PW1 Mangala and PW2 Deepali, caused their criminal intimidation and possessed the dangerous weapon i.e. sickle in contravention of the prohibitory orders issued by the Commissioner of Police, Pune. Accordingly, he came to be sentenced as indicated in the opening paragraph of this judgment.

4 Heard Ms.Ameeta Kuttikrishnan, the learned advocate appointed to represent the appellant/accused at the cost of the State. She vehemently argued that evidence of the defence witness goes to show that in past, injured PW2 Deepali had attempted to kill herself by slashing her wrist, and it was the appellant/accused who had taken her to DW1 Dr.Anil Patil for medical treatment. This evidence points out tendency of the injured PW2 Deepali to cause wounds to her, and therefore, the appellant/accused had probalilized his defence. The injuries on PW2 Deepali were self inflicted injuries and her mother was injured while preventing her to cause wounds to herself. The learned advocate further argued that the learned trial court erred

in imposing default sentence of 1 year each on four counts apart from imposition of heavy fine of Rs.5,000/- on each count, ignoring the fact that the appellant/accused is a poor person and a first time offender.

5 The learned APP supported the impugned judgment and order of conviction and the resultant sentence by submitting that evidence of the injured witnesses is sufficient to establish the offences alleged against the appellant/accused and proper sentence has been imposed on the appellant/accused.

6 I have carefully considered the rival submissions and also perused the Record and Proceedings including the deposition of prosecution witnesses as well as documentary evidence adduced on record by the prosecution. The appellant/accused is undergoing the sentence imposed on him and by now he has completed sentence of about 6 years.

7 Congruous and consistent evidence of injured PW1 Mangala and her daughter PW2 Deepali is to the effect that at about 9.00 p.m. of 8th March 2012, when PW1 Mangala was cooking food and PW2 Deepali was helping her, the appellant/accused entered in their house holding a sickle in his hand. He then questioned PW2 Deepali as to why she roams with other boys. Thereafter, he started assaulting PW2 Deepali by means of a sickle on her head and hands. Witnessing her daughter being assaulted by the appellant/accused, PW1 Mangala intervened and attempted to rescue her daughter PW2 Deepali. However, the appellant/accused assaulted her by means of a sickle and the blow landed on her left arm.

8 PW1 Mangala has narrated some background facts which are not disclosed by her daughter PW2 Deepali. As per version of PW1 Mangala, the appellant/accused is friend of her son Bhushan, and therefore, he was visiting her house in absence of other inmates of the house. This lead to a quarrel between her son Bhushan and the appellant/accused at one point of time.

Even cross-examination of PW1 Mangala shows that while the appellant/accused was working as a driver in a Call Center, he used to have food at her house and used to even sleep outside her house along with her son Bhushan. This evidence coming on record from chief-examination as well as cross-examination of PW1 Mangala points out thick relations of the appellant/accused with the family members of informant PW1 Mangala. Her evidence further shows that because of acquaintance with PW2 Deepali, the appellant/accused was insisting her to marry him but as the appellant/accused was a driver, PW2 Deepali was not ready to marry him. This was the cause of quarrel between the appellant/accused and her son Bhushan.

9 The defence has suggested to both these witnesses that in the year 2009, PW2 Deepali eloped with Sanket Bhise and he had brought her back to her house. It was further suggested to both these witnesses that PW2 Deepali insisted the appellant/accused to marry her, but he refused. PW2 Deepali was suggested that she was having one sided love affair with the

appellant/accused. It was further suggested to her that because of refusal by the appellant/accused to marry her, she got herself injured and when PW1 Mangala started to restrain her, PW1 Mangala also sustained injuries. All these suggestions were denied by both these witnesses.

10 It is a matter of common knowledge that a person, generally, does not cause injuries to himself, as in that process he may get more than what he has bargained for. Let us consider this theory of self inflicted wounds by looking at the evidence of PW4 Dr.Kiran Makan who had treated injured PW1 Mangala and injured PW2 Deepali at his hospital. His evidence, which is corroborated by contemporaneous record made by him in the form of Medico Legal Certificates at Exhibits 26 and 27, establishes the following facts :

(a) On 8th March 2012, injured PW2 Deepali was admitted to her hospital and upon her examination, the following wounds were found on her person :

i) Incised wound 3" x 1" over vertex

- ii) Incised wound 3½ " x 1" over vertex just 1" behind the first wound
 - iii) Wound over dorsum of forearm, left side, 6 cm x 4 cm with multiple extensor tendon injuries, Bone deep
 - iv) Wound 5 cm x 3 cm x 2 cm, left forearm with Ulna fracture
 - v) Wound over the little finger with complete tear of capsule near total amputated little finger of left side
- (b) On 8th March 2012 itself PW1 Mangala was admitted to her hospital with the following injuries :
- (i) Incised wound 3½" x 1" over left upper arm just above cubital fossa, muscle - deep, Bleeding ++

11 Evidence of PW4 Dr.Kiran Makan shows that injuries on PW1 Mangala and PW2 Deepali were fresh injuries caused within 24 hours with sharp cutting object. She deposed that if proper treatment would not have been given to PW2 Deepali, there was possibility of her death. From cross-examination of this witness, it is elicited that injuries caused to PW2 Deepali may be possible by self assault by a sickle.

12 PW2 Deepali is candidly denying that she had wounded herself by means of a sickle. She denied to have insisted the appellant/accused to marry her because of alleged one sided love affair. She had suffered serious injuries over her head, forearms and little finger. Infact, there was complete tear to her little finger causing total amputation thereof from left side. PW2 Deepali is a young girl and at the time of the incident, she might be aged about 17 years. She was studying in 11th Standard at the time of the incident. All these factors virtually makes the theory of self inflicted wounds by injured PW2 Deepali totally impossible. It is not possible for a girl of about 17 years of age to cause serious wounds on her head, arms as well as chopping of a little finger, and that too, for no reason. Her mother PW1 Mangala is an eye witness to the incident and she has also suffered wounds at the hands of the appellant/accused, when she attempted to save her daughter PW2 Deepali. Therefore, stray admission by PW4 Dr.Kiran Makan, in absence of any other material to substantiate the theory of self inflicted wounds, does not deserve a moment's consideration.

13 True it is that evidence of DW1 Dr.Anil Patil shows that in the year 2010 PW2 Deepali was brought to his clinic with cut injury on her left hand, evidence of this defence witness does not show that it was a self inflicted wound. The wounds found on person of injured PW2 Deepali as well as PW1 Mangala by PW4 Dr.Kiran Makan, as reflected in Injury Certificates at Exhibits 26 and 27, were not superficial wounds, and therefore, the defence has not probalilized the theory of self inflicted wounds.

14 Weapon of the offence i.e. blood stained sickle is discovered at the instance of the appellant/accused. I have carefully perused the evidence of Investigating Officer PW6 Anil Londhe, Assistant Police Inspector, and that of panch witness PW3 Satyanarayan Bangad. It is seen from their evidence that on 10th March 2012, the appellant/accused made a disclosure statement and accordingly, a blood stained sickle came to be recovered from the back side of the house. It was properly packed and sealed, as seen from the evidence adduced by the prosecution. The same was send for forensic examination along with other articles.

15 Clothes of the appellant/accused, at the time of his arrest, were seized vide Seizure Panchnama Exhibit 37 on 9th March 2012 itself, as seen from evidence of PW7 Ganesh More - panch witness, and that of PW6 Anil Londhe, Assistant Police Inspector. Clothes of both victims were also seized vide Seizure Panchnama Exhibit 38. All these articles were also send for chemical analysis. Chemical Analyser's Reports – Exhibits 65 and 67 show that blood group of PW1 Mangala and PW2 Deepali is “A”. Blood of “A” group was found on seized clothes of the appellant/accused, so also on the sickle, which was seized at his instance.

16 The Spot Panchnama is proved by the prosecution through evidence of PW5 Kshitij Kondhare and recitals in the spot panchnama Exhibit 33, so also evidence of panch witness PW5 Kshitij Kondhare shows that the incident in question took place at the house of injured PW1 Mangala. Blood was found spilled at front door of the house, as well as steps of that house. Seized sample of blood collected from the spot, upon chemical analysis,

disclosed that the blood is that of “A” group. Thus, the Chemical Analyser's Report Exhibit 64 fully corroborates testimony of PW1 Mangala and PW2 Deepali, in respect of the assault on them.

17 Careful scrutiny of evidence of injured witnesses shows that both of them are natural witnesses to the incident in question, which took place at their house. Their evidence shows that armed with a sickle, the appellant/accused entered their house and assaulted them and thereafter, threatened to kill both of them. Minute scrutiny of evidence of both these witnesses shows that their evidence is intrinsically reliable and wholly trustworthy. Being injured witnesses, they would not spare the real culprit and implicate an innocent one. In case of one accused, theory of false implication by injured witnesses does not deserved a moment's consideration. Therefore, the prosecution is successful in establishing that the appellant/accused assaulted PW1 Mangala and PW2 Deepali by means of a sickle. Considering the nature of injuries on injured PW2 Deepali, the prosecution has established intention to commit her murder harboured by the appellant/

accused. His overt acts are established by the wounds caused to PW2 Deepali. Nature of weapon used and parts of body of PW2 Deepali chosen for inflicting wounds establishes intention as well as knowledge of commission of murder of PW2 Deepali by the appellant/accused. Because of prompt medical treatment, her life was saved. Thus, evidence on record shows that the appellant/accused, with intention of causing death of PW2 Deepali, assaulted her by a sharp edged weapon. Hence, his conviction for the offence punishable under Section 307 of the Indian Penal Code cannot be faulted with.

18 The appellant/accused came to be convicted for the offence punishable under Section 326 of the Indian Penal Code for causing grievous hurt to PW1 Mangala and PW2 Deepali. He was not charged with the offence of causing grievous hurt to PW2 Deepali. That apart, the appellant/accused is also convicted for the offence punishable under Section 307 of the Indian Penal Code for attempting to commit murder of PW2 Deepali by causing wounds to her. Section 71 of the Indian Penal Code does not

permit, in such cases, to inflict punishment on the appellant/accused for the offence punishable under Section 307 of the Indian Penal Code as well as under Section 326 of the Indian Penal Code, for attempting to commit murder and for causing grievous hurt to PW2 Deepali, and that too, in absence of the Charge for causing grievous hurt to her. So far as injured PW1 Mangala is concerned, evidence on record does not show that she had suffered grievous hurt as defined by Section 320 of the Indian Penal Code. She had suffered hurt by dangerous weapon at the instance of the appellant/accused making the offence punishable under Section 324 of the Indian Penal Code.

19 The learned trial court as has also convicted the appellant/accused for the offence punishable under Section 37 read with 135 of the then Bombay Police Act. However, there is no evidence of this charge adduced by the prosecution. Evidence of the Investigating Officer is conspicuously silent about any prohibitory order issued by the Commissioner of Police, Pune, prohibiting possession of deadly weapons. Therefore, the

conviction on this count and the resultant sentence cannot be sustained.

20 So far as sentence is concerned, on four counts, the appellant/accused, as stated in foregoing paragraphs, is imposed default sentence of 1 year each. The fine of Rs.5,000/- each is imposed on the appellant/accused for committing offences punishable under Sections 307, 326, 452 and 506(ii) of the Indian Penal Code, and on each count, default sentence of 1 year each is imposed on him. At the same time, by imposing fine of Rs.5,000/- for the offence punishable under Section 37(1) read with 135 of the then Bombay Police Act, the default sentence of 1 month is imposed on the appellant/accused, probably because of provisions of Chapter III of the Indian Penal Code. The appellant/accused is a first time offender and the evidence on record shows that he is a poor person. In the matter of Shahejadjkhan Mahebubkhan Pathan vs. State of Gujarat¹, the Honourable Apex Court had brought down the substantive sentence of rigorous imprisonment for the period of 15 years to 10 years and default sentence of 3

¹ 2013 (1) SCC 570

years to 6 months, in serious offences punishable under the NDPS Act relating to conspiracy and possession of the narcotic drug in commercial quantity. The Honourable Apex Court in the said matter has considered its earlier judgments in the matter of Shantilal vs. State of M.P.² as well as Adamji Umar Dalal vs. State of Bombay³. In the matter of Shantilal (supra) it is held thus, in paragraphs 31 and 32 by the Honourable Apex Court :

“31.....The term of imprisonment in default of payment of fine is not a sentence. It is a penalty which a person incurs on account of non-payment of fine. The sentence is something which an offender must undergo unless it is set aside or remitted in part or in whole either in appeal or in revision or in other appropriate judicial proceedings or otherwise. A term of imprisonment ordered in default of payment of fine stands on a different footing. A person is required to undergo imprisonment either because he is unable to pay the amount of fine or refuses to pay such amount. He, therefore, can always avoid to undergo imprisonment in default of payment of fine by paying such amount. It is, therefore, not only the power, but the duty of the

² (2007) 11 SCC 243

³ AIR 1952 SC 14

court to keep in view the nature of offence, circumstances under which it was committed, the position of the offender and other relevant considerations before ordering the offender to suffer imprisonment in default of payment of fine.”

32 A general principle of law reflected in [Sections 63](#) to [70](#), [IPC](#) is that an amount of fine should not be harsh or excessive. The makers of [IPC](#) were conscious of this problem. The Authors of the Code, therefore, observed;

“Death, imprisonment, transportation, banishment, solitude, compelled labour, are not, indeed, equally disagreeable to all men. But they are so disagreeable to all men that the legislature, in assigning these punishments to offences, may safely neglect the differences produced by temper and situation. With fine, the case is different. In imposing a fine, it is always necessary to have as much regard to the pecuniary circumstances of the offender as to the character and magnitude of the offence.’ (Ratanlal & Dhirajlal's Law of Crimes, 26th Edn., 2007, p. 221)

The authors further stated : (Ratanlal & Dhirajlal at pp.226-227)

'.....when a fine has been imposed, what measures shall be adopted in default of payment? And here two modes of proceeding, with both of which we were familiar, naturally occurred to us. The offender may be imprisoned till the fine is paid, or he may be imprisoned for a certain term, such imprisonment being considered as standing in place of the fine. In the former case, the imprisonment is used in order to compel him to part with his money; in the latter case, the imprisonment is a punishment substituted for another punishment. Both modes of proceeding appear to us to be open to strong objections. To keep an offender in imprisonment till his fine is paid is, if the fine be beyond his means, to keep him in imprisonment all his life; and it is impossible for the best Judge to be certain that he may not sometimes impose a fine which shall be beyond the means of an offender. Nothing could make such a system tolerable except the constant interference of some authority empowered to remit sentences; and such constant interference we should

consider as in itself an evil. On the other hand, to sentence an offender to fine and to a certain fixed term of imprisonment in default of payment, and then to leave it to himself to determine whether he will part with his money or lie in goal, appears to us to be a very objectionable course....

.....We propose that, at the time of imposing a fine, the Court shall also fix a certain term of imprisonment which the offender shall undergo in default of payment. In fixing this term, the Court will in no case be suffered to exceed a certain maximum, which will vary according to the nature of the offence. If the offence be one which is punishable with imprisonment as well as fine, the term of imprisonment in default of payment will not exceed one-fourth of the longest term of imprisonment fixed by [the Code](#) for the offence. If the offence be one which by [the Code](#) is punishable only with fine, the term of imprisonment for default of payment will in no case exceed seven days.”

21 In the matter of **Palaniappa Gounder vs. State of T.N.**⁴, the Honourable Apex Court has considered the issue of sentence in default of payment of fine and has held that legitimacy is not to be confused with propriety and the fact that the court possesses a certain power does not mean that it must always exercise it. It is further held that though there is power to combine a sentence of death with a sentence of fine, that power is to be sparingly exercised because the sentence of death is an extreme penalty to impose and adding to that grave penalty a sentence of fine is hardly calculated to serve any social purpose. The Honourable Apex Court also observed that, infact, the common trend of sentencing is that even a sentence of life imprisonment is seldom combined with a heavy sentence of fine. These observations were relied by the Honourable Apex Court while deciding the case of **Shahejadhkan (supra)** in which the substantive sentence of imprisonment was brought down from 15 years to 10 years and that of default sentence from 3 years to 6 months. Relevant observations of the Honourable Apex Court in the matter of **Shahejadhkan (supra)** can be found in paragraphs

4 (1977) 2 SCC 634

12, 13 and 15, which read thus :

“12 It is clear and reiterated that the term of imprisonment in default of payment of fine is not a sentence. To put it clear, it is a penalty which a person incurs on account of non-payment of fine. On the other hand, if sentence is imposed, undoubtedly, an offender must undergo unless it is modified or varied in part or whole in the judicial proceedings. However, the imprisonment ordered in default of payment of fine stands on a different footing. When such default sentence is imposed, a person is required to undergo imprisonment either because he is unable to pay the amount of fine or refuses to pay such amount. Accordingly, he can always avoid to undergo imprisonment in default of payment of fine by paying such an amount. In such circumstance, we are of the view that it is the duty of the Court to keep in view the nature of offence, circumstances in which it was committed, the position of the offender and other relevant considerations such as pecuniary circumstances of the accused person as to character and magnitude of the offence before ordering the offender to suffer imprisonment in default of payment of fine. The provisions of Sections 63 to 70 of IPC make it clear that an amount of fine should

not be harsh or excessive. We also reiterate that where a substantial term of imprisonment is inflicted, an excessive fine should not be imposed except in exceptional cases.”

“13 While taking note of the above principles, we are conscious of the fact that the present case is under the NDPS Act and for certain offences, the Statute has provided minimum sentence as well as minimum fine amount. In the earlier part of our judgment, taking note of the fact that the appellants being the first time offenders, we imposed the minimum sentence, i.e., 10 years instead of 15 years as ordered by the trial Court. In other words, the appellants have been ordered to undergo substantive sentence of RI for 10 years which is minimum.”

“15 It is clear that clause (b) of sub-section (1) of Section 30 of the Code authorizes the Court to award imprisonment in default of fine up to 1/4th of the term of imprisonment which the Court is competent to inflict as punishment for the offence. However, considering the circumstances placed before us on behalf of the appellants-accused, viz.,

they are very poor and have to maintain their family, it was their first offence and if they fail to pay the amount of fine as per the order of the Additional Sessions Judge, they have to remain in jail for a period of 3 years in addition to the period of substantive sentence because of their inability to pay the fine, we are of the view that serious prejudice will be caused not only to them but also to their family members who are innocent. We are, therefore, of the view that ends of justice would be met if we order that in default of payment of fine of Rs.1.5 lakhs, the appellants shall undergo RI for 6 months instead of 3 years as ordered by the Additional Sessions Judge and confirmed by the High Court.”

22 In the wake of this law laid down by the Honourable Apex Court as well as the fact that the appellant/accused has already undergone 6 years of the substantive sentence and that he is a first time offender with a poor background, I am of the considered opinion that the default sentence of 1 year on four counts imposed on him by the learned trial court is harsh and excessive. The same is required to be brought down to 3 months

on each count. Similarly, conviction of the appellant/accused and the resultant sentence for the offence punishable under Section 326 of the Indian Penal Code and under Section 37 read with 135 of the then Bombay Police Act needs to be quashed and set aside.

23 In the result, the appeal is partly allowed by modifying the impugned judgment and order by the following order :

ORDER

- (i) Conviction of the appellant/accused for offences punishable under Sections 307, 452 and 506(ii) of the Indian Penal Code, so also the substantive sentence for the said offences is maintained. Imposition of fine of Rs.5,000/- on the appellant/accused for offences punishable under Sections 307, 452 and 506(ii) of the Indian Penal Code on each count, is maintained, but in default of payment of fine, the appellant/accused is directed to undergo further imprisonment for a period of 3 months, on each count.
- (ii) Conviction of the appellant/accused for the offence punishable under Section 326 of the Indian Penal Code and the resultant sentence is quashed and set aside. Instead of his conviction for the offence punishable under Section 326 of the Indian Penal Code, the appellant/accused is convicted

for the offence punishable under Section 324 of the Indian Penal Code and is sentenced to suffer imprisonment for 3 years apart from payment of fine of Rs.5,000/-, and in default, to undergo further imprisonment for 3 months.

- (iii) Conviction of the appellant/accused and the resultant sentence under Section 37(1) read with 135 of the then Bombay Police Act is quashed and set aside. He is accused of the said offence.
- (iv) Substantive sentences shall run concurrently.
- (v) The impugned judgment and order stands modified accordingly and the appeal along with the pending Criminal Application No.1449 of 2017 stands disposed of accordingly.

(A. M. BADAR, J.)