

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 734 OF 2014

Jarnail Aarjo Sardar, aged : 24 yrs.

Khairani Road, Durga Mandir Galli,

Sakinak, Andheri East-Bombay.

(Presently lodged at Arthur Road Jail

Bombay.)

..Appellant.

V/s.

State of Maharashtra.

(Through Powai Police Station

vide C.R. No. 171 of 2013.)

..Respondent.

Ms. Apeksha Vora, Court advocate appointed for appellant.

Mr. S.H. Yadav, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : DECEMBER 3, 2018.

JUDGMENT :

1 The appellant herein is convicted for offence punishable under section 307 of the Indian Penal Code and sentenced to suffer R.I. for 4 years and to pay fine of Rs. 1000/- I.d. to suffer S.I. for one month by the learned Additional Sessions Judge, Gr. Bombay inn Sessions Case No. 603 of 2013. Hence, this appeal.

2 Such of the facts necessary for the decision of this appeal are as follows :

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(i) It is the case of the prosecution that the injured herein happens to be the daughter of the complainant Shri Ramdeo Yadav. That on 23/3/2013 while she was returning from the college, she has sustained grievous injury on her abdomen. She was taken to the hospital by her parents. After conducting sonography, the doctor was of the opinion that she had sustained injury to her intestine and therefore, she needed to be operated.

(ii) On the same day, the father of the injured lodged a report at the police station on the basis of the statement of his daughter that on that day i.e. on 23rd March, 2013 while she was returning home from college at about 3.30 p.m., the appellant herein had assaulted her with scissor. She had sustained injury on her stomach.

(iii) Initially, she had disclosed that she was taken to hospital by her friend and the injuries were bandaged. Thereafter, they had been to Sakinaka Police Station from where they were referred to Rajawadi Hospital.

(iv) On the basis of the said report, Crime No. 171 of 2013 was registered at Powai Police station against the applicant for offence punishable under section 307, 506II of the Indian Penal Code. The

accused was arrested on 30th March, 2013. Investigation was completed and charge-sheet was filed on 20/6/2013. The prosecution has examined as many as 9 witnesses to bring home the guilt of the accused.

3 The case rests upon the evidence of P.W. 2 i.e. the injured, P.W. 8 and P.W.9. P.W. 2 the Victim has deposed before the Court that in fact, she was acquainted with the appellant through her friend Nilam. That He had expressed his love for her and had also suggested that they should elope. She had turned down the proposal and thereafter, their relations were severed. He had also requested her to give her cellphone number. She had denied the same. He had threatened her of dire consequences, in as much as she would be killed. On 23rd March, 2013 when she was passing from front of Lake Home Gates, the appellant had apprehended her and had also assaulted her with a scissor on her stomach. Soon thereafter, she had called upon her friends Pooja and Shweta, who had taken her home. Thereafter, she has stated that they had gone to Hiranandani Hospital. Her father had then taken her to police station and there from to Rajawadi Hospital. The statement of the injured was recorded on 24/3/2013.

4 It is elicited in the cross-examination that after assault, she had not gone to college. There are inherent contradictions in the evidence of the victim. However, she was not confronted with her

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previous statement and therefore, contradictions have not been marked. In any case, it is the contention of the victim that her statement was not read over to her and therefore, in all probabilities, there were inherent contradictions. She has also deposed that she had given the name of the accused and his cell phone number to the police. However, the said statement is not found in her statement.

5 It is seen from the statement that the police had taken her cell phone for investigation. A message of threatening was found. However, the name of the sender was not found. She had denied the suggestion that the said message was fabricated by the victim by some phone. As far as the author of the injury is concerned, she has established that the appellant was the author of the said injury.

6 The learned Counsel appointed for the appellant has drawn attention of this Court to certain contradictions, interse in the evidence of P.W. 1 and 2. P.W. 1 has deposed before the Court that when his daughter returned home, injuries were bandaged and she had disclosed that she had visited Hiranandani Hospital with her friends and doctor had bandaged the said injury. In the evidence of P.W. 2 she has mentioned that she had visited Hiranandani Hospital.

7 The prosecution has examined P.W. 7 Shweta Singh, who has

deposed before the Court that on 23/3/2013 she had received a phone call from the victim that she had sustained injuries. She was taken to Hiranandani Hospital and there was injury to her stomach. However, the witness was not aware as to how the injury was caused or who had caused the said injury.

8 The medical case papers are on record, which show that the injured had undergone Exploratory laparotomy for stab wound. That small bowel mesentery tear was seen. The learned Counsel for the appellant has vehemently argued that the medical case papers are fabricated documents. According to the learned Counsel, the injuries sustained by the victim were simple injuries as per the certificate issued by Rajawadi Hospital and therefore, according to the learned Counsel for the appellant, no evidence under section 307 of the Indian Penal Code is made out.

9 P.W. 8 Dr. Smt. Sakshi Patankar has deposed before the Court that she had examined the patient, suggested for sonography and referred to surgeon. Size of injury is approximately 2 cm. long. She has further clarified that the patient was stable when she was brought to the hospital and therefore, she had described the said injury as simple injury. The said injury certificate is at Exh. 21.

10 P.W.9 Dr. Shri Sandeep Digambar More has deposed before the Court that the injured was looking stable, but the x-ray of injury was suggesting intestinal injury caused on her small intestine. That she was discharged from the hospital after 6 days. The learned Counsel for the appellant has vehemently submitted that X-rays are not on record. She has drawn attention of this Court to the cross-examination of the P.W. 9. Learned Counsel submits that the injured was in hospital for hardly 6 days and therefore, it is not a grievous injury as contemplated under section 320 of the Indian Penal Code.

11 It is a matter on record that the ocular testimony would prevail over any other material on record. The appellant was charged with an offence punishable under section 307 of the Indian Penal Code and has been convicted for the same. Section 307 of the Indian Penal Code reads as follows :

307. Attempt to murder.—Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to [imprisonment for life], or to such punishment as is hereinbefore mentioned.

Attempts by life convicts.—2[When any person offending under this section is under sentence of 1[imprisonment for life], he may, if hurt is caused, be punished with death.]

12 In the present case, it cannot be denied that the prosecution has established beyond reasonable doubt that on that relevant day, the appellant was armed with weapon. Earlier, he had proposed to the victim. She had refused the said proposal and that he was annoyed with it.

13 In the present case, the question is not about the nature of injury but an attempt on the part of the assailant to assault the victim and the intention nurtured by him. The fact that he had brandished weapon and had also caused injury to the victim is sufficient to up-hold the conviction for offence punishable under section 307 of the Indian Penal Code and therefore, it would not be necessary to ascertain as to whether the documents are fabricated or not and moreover, the Court cannot substitute its opinion for that of the medical experts. The medical evidence would indicate that the injured had to undergo operation i.e. exploratory laparotomy. It is in these circumstances that the conviction of the appellant deserves to be upheld.

14 Before parting with this Judgment, this Court appreciates the best efforts put in by the learned Counsel Ms. Apeksha Vora, appointed to espouse the cause of the appellant. In view of this, the professional fees are quantified at Rs. 5,000/-.

15 Hence, following order is passed:

ORDER

- (i) The Criminal Appeal is dismissed.
- (ii) The conviction and sentence awarded vide Judgment and Order dated 27/3/2014 passed by the Additional Sessions Judge, Gr. Bombay in Sessions Case No. 603 of 2013 is confirmed.
- (iii) The Writ be issued expeditiously.
- (iv) The Appeal is disposed of accordingly.
The Registry to communicate this order to the appellant, who is lodged in jail forthwith.

[SMT. SADHANA S. JADHAV, J.]