

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Criminal Application (Appa) No.1134 of 2017
(State vs. Mohammad Yusuf Quazi)

 Office notes, Office Memoranda of
 Coram, appearances, Court's orders
 or directions and Registrar's orders.

Court's or Judge's Orders

Mr.J.Y.Ghurde, A.P.P. for appellant/applicant.

CORAM : R. K. DESHPANDE &
 M. G. GIRATKAR, JJ.

DATE : 15.1.2018.

Heard.

The trial Court has recorded conviction of the accused for the offence punishable under Section 324 of the Indian Penal Code and sentenced him to suffer imprisonment for three years and to pay a fine of Rs.5,000/-; in default, to suffer further simple imprisonment for a period of two years. The accused is acquitted of the offence punishable under Section 307 of the Indian Penal Code and this is what the subject matter of challenge in the present appeal by the State.

With the assistance of learned A.P.P. Mr.J.Y.Ghurde, we have gone through the Judgment delivered by the Sessions Court. In para 27, the Sessions Court has considered the evidence of Doctor, which is reproduced below :

“Coming back to medical examination as conducted by PW-4 Dr.Niraj, and his substantive testimony before the Court, he testified that on 08-02-2015 he was acting as a Duty Officer at Ramdeobaba Hospital, Nagpur and one patient namely Sunil was brought to his hospital at 2-15 p.m. Dr.Niraj testified and proved contents of medical report of injured Exh-48. Dr.Niraj has testified that on examination of patient Sunil Gaidhane he found that he was bleeding profusely from Abdomen, buttock and right hand. Margins of all three wounds are clean cut. There are total three injuries on body of victim (1) incise wound over right index finger of 3 x .5 x .5 cm, (2) incise wound over right side of abdomen of size 5 x 1 x 1 cm, (3) Stab wound on the outer upper quadrant of right buttock of size 2 x 1 x 1 cm. He testified margins itself is feature of weapon of offence used for assault purpose i.e. Sharp, hard and pointed object. As per PW-4 Dr.Niraj, injuries found on the body of injured were simple and accordingly he had issued injury report disclosing nature of injury as simple in injury certificate of victim Exh-48. ”

The learned A.P.P. has urged that the accused took out a knife kept in the dikki of two wheeler and mounted assault on the complainant and therefore, the nature of injury becomes immaterial and the intention was

to cause injury on the vital organ of the body. This aspect is considered by the trial Court in para no.32. Relevant portion of which is reproduced below :

“32. To counter argument of learned APP for intention of accused behind commission of crime, learned Counsel for the accused had argued vehemently. I agree with the submission that taking revenge of humiliation for abusing ‘nahi milta toh bhok me ja’ uttered before a day of alleged incidence, it is hardly digestible that any person would make up his mind to commit murder of anybody. Complainant has admitted that prior to incidence he had no dispute with accused Significantly, when report of incidence dated 07-02-2015 is not lodged, it is crystal clear that it was not altercation which would lead to pose danger to life.

Taking into account – non reporting of incidence of 07-02-2015, hostility of Shashi Gedam for said incidence allegedly occurred on 07-02-2015 makes me to come to conclusion that alleged incidence as posed as outcome of verbal altercation caused in search of flat for a third person Rahul in which neither accused nor victim were gaining any monetary benefit. All these circumstances make me to believe that such incidences as projected by prosecution to ascertain intention of accused to commit offence under Section 307 of Indian Penal Code falls

short to establish intention. ”

We, therefore, do not find any substance in appeal. The same is dismissed.

No order as to costs.

JUDGE

JUDGE

**jaiswal*