

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.650 OF 1997

1 Dhanaji Baliram Jadhav,

Age: 22 years,

2 Bhagwan Sopan Gund,

Age: 42 years,

Both are residing at Ladole,

Taluka Barshi, Dist. Solapur.

..Appellants.

v/s.

The State of Maharashtra.

..Respondent.

Mr. Rushikesh Kale i/b. Mr. V.V. Purwant, advocate for appellants.

Mr. S.S. Agarkar, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : OCTOBER 14, 2019.

JUDGMENT :

1 The appellants herein are convicted for the offence punishable under section 332 read with section 34 of the Indian Penal Code and sentenced to suffer R.I. for six months and to pay fine of Rs. 500/- each I.d. R.I. for one month by the Sessions Judge, Solapur vide Judgment and Order dated 30th September, 1997 in Sessions Case No. 96/96. Hence, this appeal.

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2 Such of the facts necessary to decide this appeal are as follows :

(i) Complainant P.W.1 Babasaheb Mulani was working as driver in the State Transport Corporation of Maharashtra. On 3/1/1996 he was driving S.T. Bus No. MSA/7430 from Vairag to Osmanabad at 5.15 p.m. After leaving the bus depot and travelling for about one kilometer, he realised that some people were sitting on the roof of the bus. He alighted from the bus. He requested the said passengers to come down. However, the appellants, who were on the roof of the bus did not listen to the complainant. The complainant climbed the staircase of the said S.T. Bus and had shouted at the said passengers. They refused to come down and were insisting upon him to drive the bus.

(ii) There was verbal altercation, in which the appellants had pushed the driver. He fell down and sustained injuries. The accused/appellants had attempted to flee from the spot. The other passengers chased them and accosted them. They were taken to the police station.

(iii) The complainant P.W. 1 was taken to Primary Health Center, Vairag. The doctor in the Primary Health Center had

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seen the head injury and had referred the said patient to the Chief Medical Officer, General Hospital, Solapur after noting that he had sustained head injuries. The said certificate is at Exh. 15. The patient was admitted in Wadia Charitable Hospital from 3/1/1996 to 23/1/1996. The Certificate issued by N.N.Wadia Charitable Hospital at Solapur is at Exh. 16.

(iv) The accused were in custody from 4/1/1996 to 8/1/1996. Since Crime No. 4 of 1996 was registered for offence punishable under section 333, 338, 353, 323 read with 34 of the Indian Penal Code. After completion of investigation, charge-sheet was filed. Case was committed to Court of Sessions and registered as Sessions Case No. 96 of 1996.

3 The prosecution has examined as many as 7 witnesses to bring home the guilt of accused. The case rests upon the evidence of P.W. 1 complainant, P.W. 3 and 4 who are eye witnesses to the incident.

4 P.W.1 complainant has deposed in consonance with the FIR lodged by him. It is admitted position that the accused were travelling as passengers on the bus driven by the complainant. They were seated on the roof-top of the bus and without yielding to the request of the driver, they had pushed

him.

5 P.W.2 Dr. Mahendra Chitare had treated the complainant from 3/1/1996 to 23/1/1996 and has proved the medical case papers which are marked at Exh. 12. He has deposed that the patient was conscious. His other parameters were normal but he was complaining of reeling sensation and headache and neck pain. He had sutured wound over left temporal parietal region of the scalp. On performing CT scan, no significant injuries to neck or scalp were diagnosed. Upon perusal of the medical case papers, it appears that the complainant was 46 years old and was a known case of vertigo and hyper acidity. There is no effective cross-examination about his suffering from vertigo. The information was given to Sadar Bazar Police Station by the doctors from Wadia Hospital. The doctor has deposed before the court that the injuries sustained by the complainant were simple in nature.

6 P.W. 3 Nabulal Mulani happens to be the eye witness who was travelling as passenger in the same bus. He had seen that the driver had fallen down. The driver had immediately disclosed that he was pushed by the people who were travelling on the top of the bus and the accused were accosted by the other passengers. The incident is admitted. The driver and the

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accused were not known to each other. The incident had occurred on the spur of moment.

7 The learned Counsel for the appellants has submitted that the accused persons had not intentionally pushed the driver. But when they were descending the staircase, he had sustained a push and had fallen down.

8 As against this, learned APP has submitted that in fact, it was not proper for the appellant to travel on the roof top of the bus and that it was for their safety that the complainant had requested them to descend from the top. However, they had raised quarrel and therefore, they do not deserve any leniency. It is also submitted that the complainant was treated as an injured patient for about more than 20 days and therefore, even if the injury appeared to be simple, it was grievous as defined under section 320 of the Indian Penal Code.

9 The Court cannot be oblivious of the fact that the driver was a known case of vertigo and even simple fall would have been fatal. The complainant was only complaining of reeling sensation and head-ache. There was no other injury. The incident had occurred on the spur of the moment without any premeditation. The accused No. 1 was hardly 21 years old

at the time the incident and the accused No. 2 was 41 years old. Today accused No. 2 is about 65 years old. It would not be fair to remand them to custody after 25 years of the incident. In fact, the accused No. 1 i.e. appellant No. 1 could have been released on probation. However, it appears that it was never prayed for. A penalty would relate back to the date of offence. The benefit of the provisions of section 3 of the Probation of Offenders Act, 1958 can be extended to the appellants even today, since the sentence imposed upon them is 6 months. Hence, the appeal deserves to be partly allowed.

10 Hence, following order is passed :

ORDER

- (i) The appeal is partly allowed.
- (ii) The order of conviction passed by the Sessions Judge, Solapur vide Judgment and Order dated 30th September, 1997 in Sessions Case No. 96/96 is hereby confirmed.
- (iii) The sentence of fine is maintained.
- (iv) The appellants are released on probation. They shall maintain peace and harmony in the village and security bond is

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to be furnished. The appellants shall execute the security bond before the Court of Barshi, subject to the satisfaction of the court.

(v) Writ be issued forthwith.

11 The appeal is disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]