

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

CRIMINAL APPEAL NO.661 OF 2010

Kiran Vishnu Karanjikhade)....Appellant

V/s.

The State of Maharashtra)....Respondent

Mr.Abhaykumar Apte for the appellant.

Ms.Jyoti Lohokare APP for the respondent-State.

CORAM : K.R.SHRIRAM,J

DATE : 6.5.2019

P.C.:-

1. The appellant who was the accused, has been (a) convicted for offence punishable under section 333 of the Indian Penal Code and is sentenced to suffer rigorous imprisonment for 3 years and to pay fine of Rs.1000/- and in default to suffer simple imprisonment for 15 days ; (b) convicted for the offence punishable under section 353 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.500/- and in default to suffer simple imprisonment for 8 days ; (c) the substantive sentence to run concurrently ; (d) accused is entitled to set off under section 428 of the Cr.P.C. in respect of the period of pre conviction detention in jail from 27.5.2006 to 17.6.2006 (about 21 days).

2. It was the case of the prosecution that on 27.5.2006 at about 1.30 p.m. the complainant Dinkar Laxman Lokhande was assigned duty of patrolling in Nigdi police station at Yamuna Nagar Outpost along with Police Constable Tamse (PW 3). While the complainant and PW-3 Police Constable Tamse were patrolling the area from Sambhaji Nagar via Vrundavan society on their motorcycle, when they reached Thermax Chowk, in front of hotel RathRani, they saw a crowd of people had collected. They stopped and parked the motorcycle and proceeded towards the crowd to inquire/ascertain the reason why people had collected/there was a crowd. They found 2 persons, one of which is accused/appellant involved in a quarrel. They separated the two persons and when they inquired with the accused/appellant his name and the reason for the quarrel with the other person, the accused gave his name but without explaining further, gave a fist blow on the nose of the complainant. This resulted in the complainant's nose bleeding. The accused/appellant also pushed PW-3 Tamse. Both, the complainant and Tamse caught hold of accused, put him in an auto rickshaw and brought to Yamuna Nagar Police station. The accused was misbehaving and that too after realizing that both persons were policemen and was shoving and pommelling complainant and PW 3 Tamse. On reaching Yamuna Nagar outpost the complainant and PW-

3 informed the incident to PW-6 Nivruti Chimaji Rengle, Police Head Constable, who referred the complainant to YCM Hospital later for treatment. Medical officer Dattatraya Babasaheb Vankhande (PW 5) gave immediate treatment to the complainant and referred him to the ENT department for X-ray. X-ray (Exh.26) indicates that the nostril bone of the complainant was fractured and injury certificate (Exh.25) was issued after which the complainant returned to Yamuna Nagar outpost and lodged the FIR against the accused appellant. After receipt of the complaint PW-6 forwarded the FIR with his enclosing letter to Senior PI, Nigdi police station who made the endorsement to register the offence punishable under sections 353 and 333 of IPC against the accused/appellant. PW-7 has investigated the matter, recorded the statement of the witnesses, executed spot panchanama and after being satisfied, filed charge-sheet against the accused in the Court of JMFC Pimpri, Pune. As the offence is exclusively triable by the Court of Sessions, a committal order dated 4.3.2009 was passed and the Learned JMFC, Pimpri committed the matter to the sessions Court. On 28.4.2009 charge was framed against the accused for offences punishable under sections 333 and 353 of IPC. The charge was read over and explained to the accused who pleaded not guilty and claimed to be tried by separate plea. The defence of the accused was total denial.

3. It was the case of the accused that he was proceeding on his motor cycle from the Thermax square at which time 2 persons who were standing on the road and checking motor cycles. It seems PW-1 gave signal to accused to stop his motor cycle but as the complainant and PW-1 were both in civil dress, he did not respond and proceeded on his motor cycle. It is further stated that PW-1, who is the complainant, attempted to catch the motor cycle and in that attempt fell down to the ground, resulting in the injury to his nose. Accused thereafter stopped his motor cycle and went back to see whether complainant was alright, at which time he came to know PW-1 and PW-3 were both police personnel. In short, no incident as alleged by the prosecution had happened.

4. In support of its case, prosecution has examined 7 witnesses who are as under :-

1) PW No.1 – Dinkar Laxman Lokhande (Exh.12)

Complainant ;

2) PW No.2- Prakash Shivaji Patil (Exh.18) independent witness of quarrel ;

3) PW No.3 Ulhas Dinkar Tamse (Exh.18A) Eye witness of incident ;

4) PW No.4- Madhukar Ramchandra Oturkar (Exh.19)

Panch witness ;

5) PW No.5- Dr.Dattatraya Babasaheb Vankhande

(Exh.24) Medical Officer ;

6) PW No.6- Nivrruti Chimaji Rengle (Exh.27) P.H.C.

Duty officer at Yamunanagar Outpost (Police chowky) ;

7) PW No.7- Gautam Dnyeshwar Gaikwad (Exh.28)

Investigating officer.

5. Prosecution also relied on the FIR-(Exh.13), medical certificate issued by YCM Hospital- (Exh.25), X-ray report (Exh.26), Spot panchanama (Exh.20).

6. Statement of the accused under Section 313 of Cr.P.C. was also recorded and he declined to be examined on oath and he did not want to examine any defence witnesses in support of his defence.

7. After considering the evidence the Court came to a conclusion that the case of the prosecution was correct, the witnesses were not motivated in any way and the stand of the accused that the complainant fell when he tried to catch his motor cycle has also been dismissed. The Court also relied upon the judgment of the Apex court

in ¹*Sacha Singh and others V/s. State of Punjab* to come to a conclusion that PW 3 being from the police department, credibility of the witness should not be doubted and the prosecution has established its case beyond reasonable doubt. Going on the basis of the evidence the Court also found that if the case of the accused/appellant was to be believed, then the complainant would not have got just a nose injury but would have got injuries on the other parts of the body. Relying on the evidence of PW-5 Dr.Vankhande and referring to the X-ray, the Court accepted the fact that the complainant suffered fracture to his nasal bone. The nature of the injury is oedematous tender, contusion over nose, bony creptius and found fracture to the nasal bone of the complainant. Therefore the Court came to the conclusion that the accused was guilty of the offence charged.

8. I am not going into all the points raised by the accused/appellant and how it was dealt with by the Court because Shri Apte restricted his submissions only to reduce the conviction from under Section 333 to section 332 and consequently reduce the sentence also.

9. Mr.Apte submitted that there was no grievous hurt to the

¹ 2003 Cr.L.J. page-3876

complainant and therefore, the appellant/accused could not have been charged under section 333 of the IPC and only Section 332 was applicable.

10. Section 320 of the IPC defines grievous hurt as under :-

“320. Grievous hurt- The following kinds of hurt only are designated as “grievous” :-

First – Emasculation ;

Secondly – Permanent privation of the sight of either eye ;

Thirdly – Permanent privation of the hearing of either ear ;

Fourthly – Privation of any member or joint ;

Fifthly – Destruction or permanent impairing of the powers of any member or joint ;

Sixthly – Permanent disfiguration of the head or face ;

Seventhly – Fracture or dislocation of a bone or tooth ;

Eighthly – Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.”

11. Fracture of a bone is a grievous hurt. Exh.25 which is the medical certificate issued by YCM Hospital does indicate that there was a fracture to the nasal bone. PW-5, Dr.D.B.Vankhande in his examination-in-chief has also opined that as per his investigation, the X-ray (Exh.26) shows fracture of nasal bone. There is no cross

examination to prove otherwise.

12. Therefore, there is a fracture to the nasal bone of the complainant and fracture of a bone is defined to be one kind of hurt designated as grievous under section 320 of IPC. Therefore, the charge framed as well as sentence is correct under section 333 of IPC and it cannot fall under section 332 of IPC which only says whoever “voluntarily causes hurt” whereas section 333 says whoever “voluntarily causes ‘grievous’ hurt”.

13. As regards the sentencing under section 333, it provides for a term which may extend to 10 years. The sentencing is only for 3 years.

14. In the circumstances, having considered the evidence, I do not find any infirmity in the order passed by the sessions Court. Therefore, I see no reason to interfere with the impugned order. Appeal dismissed.

15. Bail and bond cancelled. Accused to surrender to the trial court within two weeks.

16. All to act on authenticated copy of this order.

(K.R.SHIRIRAM,J)