

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL APPEAL No. 53 OF 2014

Mr. Dexter Fernandes
son of Milagres P. Fernandes
25 years old, bachelor,
Businessman, Indian National,
Resident of House No.2280,
Opposite Dr. Gomes House (Old)
Bepequegal, Curchorem, Goa.

..... Appellant

Versus

State of Goa
(Through Curchorem Police Station)

..... Respondent

Mr. Surendra G. Dessai, Senior Advocate with Mr. Anoop Gaonker,
Advocate for the Appellant.

Mr. Pravin N. Faldessai, Additional Public Prosecutor for the State.

Coram:- M. S. SONAK, J.

Date:- 07.11.2020

ORAL JUDGMENT:

Heard Mr. Surendra G. Dessai, the learned Senior Advocate with Mr. Anoop Gaonker, the learned Counsel for the appellant, and Mr. Pravin Faldessai, the learned Additional Public Prosecutor for the State.

2. This appeal is directed against the judgment and order dated 10.04.2014 made by the learned Additional Sessions Judge-I in Sessions Case No.2/2012 convicting the appellant for offences under Sections 324, 427 and 341 of the Indian Penal Code (IPC). On account of such conviction, the appellant was sentenced in the following terms:

- (i) The accused is sentenced under section 324 of I.P.C. to undergo simple imprisonment for a period of four days and pay compensation of ₹35,000/- (Rupees Thirty Five Thousand only) under Section 357(3) of Code of Criminal Procedure, in default to undergo simple imprisonment of three months.
- (ii) The above amount of ₹35,000/- (Rupees Thirty Five Thousand Only) shall be paid to the injured, PW10, Barkat Ahmed, as compensation.
- (iii) The accused is also sentenced under section 341 of I.P.C. to pay a fine of ₹500/- (Rupees One Thousand only) in default to undergo simple imprisonment of seven days.
- (iv) The accused is also sentenced under section 427 of I.P.C. to pay a fine of ₹1000/- (Rupees One Thousand only) in default to undergo simple imprisonment for fifteen days.

- (v) Needless to mention, the period of detention of 4 days undergone by the accused during the course of investigation shall be set off against substantive sentence awarded in this case under section 428 of Cr.P.C.

3. Having heard the learned Counsel for the parties and on perusal of the evidence on record, and in peculiar facts of this matter, a case is made out to interfere with the conviction under Section 324 of the IPC and to convert such conviction as one under Section 325 of the IPC. This is based on the testimony of PW6-Dr. Neil Barreto and PW7- Dr. Sundara Bhangui. The deposition of these two doctors is sufficient to create a doubt as to whether the injury caused to the victim, in this case, was by a dangerous weapon or not. In such circumstances, it will not be appropriate to convict the appellant under section 324 of the IPC but under section 325 of IPC.

4. Dr. Neil Barreto (PW6), in his deposition stated that he will not be able to comment whether the injury was caused by a sharp weapon or a blunt weapon. Further, he deposed that he cannot say anything to the suggestion that the injury cannot be caused by M.O. No.4, i.e. the coita.

5. Similarly, Dr. Sundara Bhangui (PW-7) also deposed that she cannot say anything to the suggestion that the injury cannot be

caused by M.O No.4, coita, on account of the size, sharpness, and grip of the weapon. She admitted that the second injury can be caused when a person falls on the ground and tries to hold on to the ground. She admitted that it was not a bleeding injury. She also admitted that the second injury cannot be caused by M.O.No.4. She stated that it can be caused because of a blunt object.

6. In the aforesaid state of evidence it will not be appropriate to sustain the conviction under Section 324 of the IPC. Instead, the conviction under Section 325 of the IPC may be proper.

7. Consequent upon the conversion of the conviction under Section 324 of the I.P.C into 325 of the IPC, it is clear that all the offences, i.e. offences under Section 325, 341, and 427 of the IPC are compoundable offences.

8. Mr. Dessai, the learned Senior Counsel for the appellant points out that the appellant has already undergone a sentence of imprisonment of 4 days as an undertrial and the appellant has already deposited the compensation amount before the learned Additional Sessions Judge and the said amount has also been withdrawn by the victim. To this, the accused has no objection whatsoever. Mr. Rahim, the father of the victim also confirms that his son has withdrawn the compensation amount of ₹35,000/- from the Court of the learned Additional Sessions Judge.

9. Mr. Dessai submits that the victim is today not available in Goa. The victim is agreeable to the compounding of the offences. The victim's father has been authorised by the victim to expressly say so by appearing in this appeal. Incidentally, it is the victim's father, Mr. Abdul Rahim, who was the complainant in the matter and has been examined as PW-1.

10. Mr. Abdul Rahim has appeared virtually and has made a statement that he knows the accused and his family. He has stated that possibly the incident was an aberration and therefore, he wishes to let bygones be bygones. He states that now the relationship between the accused and himself and his son has improved and they have no interest in insisting upon the conviction to continue.

11. Mr. Dessai, the learned Senior Counsel for the appellant submits that the accused, as a gesture of goodwill, and further, to compensate the victim and his father for some medical expenses which they may have had to incur, is paying Mr. Abdul Rahim an amount of ₹65,000/- by cheque dated 07.11.2020 drawn on State Bank of India, Sanvordem-Curchorem Branch. He states that this cheque is issued by Cynthia Fernandes, the mother of the accused in favour of Abdul Rahim who is duly authorised to accept the same on behalf of his victim son. Mr. Abdul Rahim acknowledges the receipt of such cheque.

12. Mr. Pravin Faldessai, the learned Additional Public Prosecutor leaves the matter to the Court, now that the parties have expressed willingness that the offences be compounded. The accused in this case was a young boy and it is possible that the incident took place in the heat of the moment. Now that the relationship between the parties has improved, there is no good reason not to permit compounding of the offences.

13. As a result, this appeal is disposed of by making the following order:-

ORDER

- A) The conviction for offence under Section 324 of the IPC is set aside and substituted by conviction for the offence under Section 325 of the IPC.
- B) The offences under Section 325, 341 and 427 of the IPC are ordered to be compounded and, consequently, the accused is acquitted of the same.
- C) The impugned judgment and order stand modified accordingly.

14. There shall be no order as to costs.

M.S. SONAK, J.