

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL APPEAL NO.71/2014**

Mr. Shrikant Velip
s/o. Shri Arjun Velip,
52 years, male, Indian National,
R/o. House No.258, Vargani,
Netravaim, Sanguem, Goa. ... Appellant

Versus

State, through P.P.
Hon'ble High Court of Bombay
at Panaji, Goa. ... Respondent

Mr. A. B. D'Sa along with Mr. Sahil Sardesai, Advocates for the
appellant.

Mr. M. Amonkar, Additional Public Prosecutor for the State.

Coram:- M.S. SONAK, J.

Date:- 22nd October, 2020

ORAL JUDGMENT:

Heard Mr. A. B. D'Sa along with Mr. Sahil Sardesai for the
appellant and Mr. M. Amonkar, learned Additional Public Prosecutor
for the State.

2. This appeal is directed against judgment and order dated
21.11.2014 made by the learned Additional Sessions Judge, South Goa

at Margao in Sessions Case No.23 of 2013 convicting and sentencing the appellant to undergo Simple Imprisonment of two years and to pay a fine of ₹35,000/- for the offence under Section 326 of the Indian Penal Code (IPC) and to undergo Simple Imprisonment for a period of one month for the offence under Section 336 of IPC.

3. The case of the prosecution is that on 06.03.2013 at about 15.30 hrs. at Vargani Netravalim, Sanguem the accused assaulted his brother with spade with an intention to kill him. The blow, missed the head but hit his brother's right thigh as a result of which, the brother, not only received a big cut injury but the thigh bone was broken resulting in grievous injuries. The prosecution also alleged that the accused further threw the spade on his brother's daughter which, however, missed her. On this basis, the prosecution alleged that the accused has committed an offence punishable under Sections 307 and 336 of IPC.

4. The prosecution examined Eleven witnesses in support of its case and further, the statement of the accused under Section 313 of the Criminal Procedure Code recorded. The accused, despite opportunity, did not examine himself or lead any other defence evidence.

5. Mr. D'Sa, the learned counsel for the appellant submits that the evidence in this case, was not at all sufficient to convict the appellant under Sections 326 and 336 of IPC. He submits that the evidence on

record, at the highest, suggests that there was some minor altercation between the two brothers on the issue of water course which was in fact necessary for irrigating the appellant's field. He points out that the appellant's brother had already sustained injuries on his right leg and it is possible that on account of the fall due to the minor altercation, the injuries were aggravated. He submits that all this material, has been completely ignored and therefore, the conviction recorded against the appellant is required to be set aside.

6. Without prejudice, Mr. D'Sa submits that the sentence imposed upon the appellant is disproportionate and harsh. He submits that this was a clear case of a dispute on account of water course and in fact, the provocation was offered by the victim brother. He points out that the appellant today is a senior citizen of about 60 years, who has already suffered a heart attack and a fracture to his leg. He submits that the appellant, who is present in his chamber has instructed him to submit that he would not be averse to paying a fine of ₹1 lakh which could then be made over to the widow of his brother (victim). Mr. D'Sa submits that this is a fit case where the present term can be waived and in any case, reduced.

7. Mr. Amonkar submits that this is a case where the victim sustained grievous hurt. He submits that all the ingredients of Sections 326 and 336 of IPC were established by the prosecution beyond any

reasonable doubt. Accordingly, there is no case made out to interfere with the impugned judgment and order made by the learned Sessions Judge.

8. The rival contentions now fall for my determination.

9. The prosecution case is based on the evidence of the victim (PW9 – Rovlu Velip), who is incidentally the brother of the appellant herein. Further, the prosecution also relies upon the evidence of two eye witnesses to the incident i.e. Purva Velip (PW1) and Vitem Velip (PW2).

10. On evaluation of the evidence of PW1, PW2 and PW9, there can be no doubt that the appellant in this case, abused and assaulted his brother Rovlu with a spade on the upper portion of the right thigh as a result of which, Rovlu, fell into the paddy field and was grievously injured. The thigh bone was fractured and it is only with considerable difficulty that the victim could be transferred to the Goa Medical College, Bambolim (GMC). There, the victim, was operated and discharged after about Six days. There is evidence that the victim had to visit GMC, Bambolim, for several days thereafter. The victim deposed that on account of the injuries, he was not in a position to either stand or walk.

11. The evidence of the victim PW9 has been sufficiently corroborated by the testimonies of the eye witnesses PW1 and PW2. Even though, these witnesses were related to the victim, their presence at the site was quite natural. There is really no reason to disbelieve the evidence of these witnesses as well.

12. The medical evidence on record also corroborates the deposition of PW9 insofar as the injuries sustained by him are concerned. PW11 has deposed to the injuries as well as the medical certificate, hurt certificate, etc. There is absolutely no good reason to discard this evidence.

13. Having said this, the evidence on record, also suggests that the dispute between the two brothers was essentially over a water course. From the deposition of PW1, PW2 and PW9 it does appear that they were undertaking some activity in the water channel and the appellant, apprehended that such activity which involved filling mud in the water channel, which would cut off the source of water supply to his field in the vicinity. That is the reason why he rushed to the spot where PW1, PW2 and PW9 were undertaking the works and there ensued an altercation between the brothers.

14. Although, this may not be a case of some sudden or grave provocation, it is quite clear that the appellant, had absolutely no

intention to kill his own brother and therefore, the prosecution, was not at all justified in leveling charge under 307 of IPC in this matter. The evidence on record, bears out that the appellant has indeed caused grievous hurt to the victim (PW9) on account of the assault by the spade. However, there is also evidence on record which suggests that PW9 had already injured his this very leg i.e. the right leg earlier and therefore, it is possible that the impact of the assault aggravated his earlier injury even further.

15. PW9 has himself deposed that about ten years prior to the incident he met with an accident and sustained injury on his right leg and below knee. He admitted that he was operated after the accident. He also deposed that he had given money to the appellant for arranging blood transfusion at the time of earlier operation. He claimed that he did not remember that the appellant had given him blood at the time of such operation. He admitted that he was using crutches after the operation and the right leg on which he was operated was not touching the ground properly. He also admitted that he had some visionary problems on account of such accident.

16. If all such evidence is taken into account, then, it does appear, that the sentence of two years imposed upon the appellant is quite harsh and the same, deserves to be considerably reduced. This is more so on account of the offer made by the appellant that he would pay a

fine of ₹1 lakh which can then be made over to the widow of his brother, since, his brother has by now expired. Mr. D'Sa pointed out that the appellant, by now, is a senior citizen and he has already suffered a heart attack as well as a fracture on his own leg.

17. Taking into consideration all such aspects, though, there is no necessity to interfere with the conviction of the appellant for the offence under Section 326 and 336 of IPC, interference is warranted with the sentence imposed on the appellant. According to me, in this case, the appellant can be sentenced to undergo Simple Imprisonment for a period of One month and to pay a fine of ₹1 lakh for the offence under Section 326 of IPC. In case the fine amount is not paid, the in-default sentence will be Simple Imprisonment for a period of Three months. The sentence for the offence under Section 336 of IPC requires no interference. However, the substantive sentences, are directed to run concurrently. Mr. D'Sa, on the basis of instructions from the appellant who is present in his chamber and attending his virtual Court proceedings states that this fine amount will be deposited in this Court itself within a period of four weeks from today. Accordingly, four weeks time is granted to the appellant for deposit of the fine amount.

18. If the fine amount is indeed deposited, then, the Legal Services

Authority, to ensure that this fine amount is paid to the widow of late Rovlu Velip i.e. Gulabi Velip (PW3).

19. Mr. D'Sa submits that the appellant may be granted time upto 22.11.2020 to surrender before the Trial Court. The request, according to me, is quite reasonable and therefore time as prayed for is granted. In case, the appellant does not surrender by this date, the learned Trial Judge to take necessary steps to apprehend the appellant for serving the sentence now imposed.

20. This appeal is partly allowed and the impugned judgment and order is modified in the aforesaid terms. There shall be no order as to costs.

21. All concerned to act on the basis of an authenticated copy of this Order.

M. S. SONAK, J.