

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

CRIMINAL APPEAL NO. 813/2019.

Narayan Vitthal Survey,
Age 55 years, Occupation
Cultivator, resident of Shelgaon Bagade,
Taluq Malegaon, District Washim.

... **APPELLANT.**

VERSUS

1.The State of Maharashtra,
through P.S.O., Shirpur,
Taluq Malegaon, District Washim.

2.Sanjay Shalikram Surve,
Age 34 years, Occupation
Cultivator, resident of Shelgaon Bagade,
Taluq Malegaon, District Washim.

... **RESPONDENTS.**

Shri R.G. Kavimandan, Advocate for the Appellant.
Ms. H.N. Jaipurkar, A.P.P for Respondent No.1.
Shri S.D. Chande, Advocate None for Respondent No.2 – Served.

CORAM : VINAY JOSHI, J.

DATE : DECEMBER 16, 2020.

ORAL JUDGMENT :

Heard. **Admit.**

Considering the controversy involved and with consent of learned Counsel present for the parties, the matter is taken up for final disposal.

2. This is an appeal or original informant challenging the order passed in Criminal Appeal No.3/2014 of setting aside the conviction under Section 326 of the Indian Penal Code, and also for challenging the quantum of sentence. Precisely the informant has prayed for setting aside the order passed by the Appellate Court and for restoration of order of conviction passed by the Judicial Magistrate First Class in R.C.C.No. 48/2012 for the offence punishable under Section 326 of the Indian Penal Code.

3. The facts in brief are that, at the instance of appellant [informant], Crime No. 92/2011 was registered against respondent no.2 / accused for the offence punishable under Section 326 of the Indian Penal Code. On completion of the investigation, charge sheet came to be filed in the Court of Judicial Magistrate First Class. The prosecution led evidence of 8 witness. The learned Magistrate held the accused guilty of commission of offence punishable under Section 326 of the Indian Penal Code, and imposed punishment to undergo rigorous imprisonment for 6 months along with fine of Rs.1000/- with default clause. The said order of conviction was

challenged by the accused in Criminal Appeal No.3/2014 before the Sessions Court. On merits the Sessions Court held that the prosecution failed to establish commission of offence punishable under Section 326 of the Indian Penal Code, however, by resorting to provisions of Section 222 of the Code of Criminal Procedure, has convicted the accused for the offence punishable under Section 324 of the Indian Penal Code and imposed punishment to pay fine of Rs.1,000/- with default clause.

4. The learned Counsel for the appellant has expressed dissatisfaction regarding the acquittal of accused under Section 326 i.e. for the offence of grievous hurt by stating that the learned Sessions Judge has failed to consider that the nature of injury was dangerous to life. Secondly, he would submit that the sentence imposed by the Sessions Court is totally disproportionate which requires to be enhanced. The accused has not challenged the order of conviction, meaning thereby there is no challenge to the occurrence as well as to the aspect of assault on the complainant. The controversy is very short, since the scope of appeal is restricted to examine as to whether the injury caused to the informant amounts to grievous hurt or simple hurt.

5. In the light of limited controversy evidence of P.W.1

Narayan Surve [informant] and P.W.7 – Sumit Halge, Medical Officer along with the medical certificate (Exh.40) was gone into. The informant has deposed that at the relevant time the accused by means of sickle gave blow on his hand and thigh. Moreover, the accused dealt stick blow on his head. The evidence of Medical Officer is very much relevant to find out the nature of injury. On the date of incident itself, the medical officer has examined the informant and noted the injuries. On examination he found following injuries on the person of the informant :

- (1) Abrasion over his head and middle and ring finger on left hand, over little finger at right hand.
- (2) L.W. over his left thigh which is deep measuring about 10 c.m. to 5 c.m.

The medical officer stated that there was continuous bleeding from the injury. It was caused by sharp object and injury was of grievous nature, and accordingly injury certificate (Exh.40), has been issued.

6. Needless to say that mere opinion of Medical Officer does not ipso facto mean that injury was of grievous nature only. Section 320 of the Indian Penal Code defines a term “grievous hurt”, which has specified 8 categories of injuries which amounts to grievous hurt. Otherwise the rest would be a simple hurt. In context with the requirement of grievous hurt as defined in the statute, the

injury certificate was gone into. However, the injury sustained by the accused nowhere finds place in either of the clauses as set out in Section 320 of the Indian Penal Code.

7. The learned Counsel for the appellant would submit that the injury would fall in clause eightly since it was endangerous to life. Bleeding injury to thigh by no stretch of imagination can be held to be endangerous to life. Moreover, the Medical Officer has not opined that the thigh injury was endangerous to life, therefore, submission in this regard is wholly untenable. The Sessions Judge has rightly appreciated the said aspect and therefore, no fault can be found in holding that it was a 'simple hurt' punishable under Section 324 of the Indian Penal Code. In view of that, no interference is called to the extent of reduction of conviction for the minor offence punishable under Section 324 of the Indian Penal Code.

8. The next aspect is about proportionality of the sentence imposed by the Sessions Court. It is a trite law that the Courts while passing sentence shall take into consideration the gravity of the offence, impart of injury, circumstances in which the offence is committed and all other like relevant factors. Section 324 of the Indian Penal Code provides punishment of imprisonment for either description for a term which may extent to three years or with fine,

or with both. The Sessions Court has taken into account the fact that the incident had occurred prior to 8 years and therefore, it is not just and proper to sent the accused behind bars and accordingly, imposed sentence of paying fine of Rs.1000/- only.

9. While imposing sentence, the impact of injury and the harm caused to the victim plays pivotal role. Herein on flimsy ground the accused had assaulted the victim by means of sickle which is a dangerous weapon. He has caused bleeding injury at the thigh of the accused and further dealt a stick blow on his head. Certainly, in view of the act of the accused fine of Rs.1000/- is totally disproportionate, inadequate and against the requirement of act committed.

10. True by the time 11 years have been passed from the date of occurrence, hence, there is no propriety in sending the accused behind bars. However, rights of victim have to be remembered while awarding sentence. One of the object of imposing punishment is to teach a lesson to the accused about his misdeeds. In such kind of cases the Court must invite its attention towards a policy of grant of compensation to the victim for their suffering. In the circumstances, an amount of fine of Rs.25,000/- would meet the ends of justice.

11. In the result following order is passed :

- (i) Criminal Appeal is partly allowed.
- (ii) The judgment and order passed by the Sessions Judge, Washim in Criminal Appeal No.3/2014 on 24.10.2019 is modified only to the extent of sentence. The respondent no.2 – accused is convicted for the offence punishable under Section 324 of the Indian Penal Code and is sentenced to pay a fine of Rs.25,000/- (Rs. Twenty Five Thousand only), in default of payment of fine, he shall suffer simple imprisonment for three months.
- (iii) Fine if deposited, it shall be paid to the original informant towards compensation in terms of Section 357[1] of the Code of Criminal Procedure.
- (iv) Four weeks time is granted to respondent no.2-accused to deposit fine amount in the trial Court, failing which the Trial Court to take further necessary steps.

JUDGE

Rgd.